

LIFESTYLE COMMUNITIES

vs.

CITY OF WORTHINGTON

Deposition of

Doug Smith

October 10, 2023



PRI COURT
REPORTING

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IN THE UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF OHIO
EASTERN DIVISION

LIFESTYLE COMMUNITIES,)	
LTD., ET AL.,)	
)	
Plaintiffs,)	
)	
vs.)	Case No.
)	2:22-cv-1775
CITY OF WORTHINGTON,)	
OHIO,)	
)	
Defendant.)	

DEPOSITION
of DOUG SMITH

Taken at Worthington City Hall
6550 North High Street
Worthington, Ohio 43085
on October 10, 2023, at 1:08 p.m.

Reported by: Rhonda Lawrence

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2

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STIPULATIONS

It is stipulated by and among counsel
for the respective parties that the deposition
of DOUG SMITH, the witness herein, called by the
Plaintiffs under the applicable Rules of Federal
Civil Court Procedure, may be taken at this time
by the stenographic court reporter and notary
public pursuant to notice; that said deposition
may be reduced to writing stenographically by
the court reporter, whose notes thereafter may
be transcribed outside the presence of the
witness; and that the proof of the official
character and qualification of the notary is
waived.

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1 DOUG SMITH

2 being first duly sworn, as hereinafter
3 certified, deposes and says as follows:

4 CROSS-EXAMINATION

5 BY MR. INGRAM:

6 Q. Please state your name for the record.

7 A. My name is Doug Smith.

8 Q. Mr. Smith, good afternoon. My name is
9 Chris Ingram. I know we just met. I represent
10 Lifestyles Communities. And for ease of
11 reference, how about we both refer to Lifestyle
12 Communities as either Lifestyle or LC?

13 A. LC would be great. Let's do it.

14 Q. Have you been deposed before, Mr. Smith?

15 A. I have.

16 Q. How many times?

17 A. Let's see. Two depositions.

18 Q. When was the first deposition?

19 A. would have been April of '21. 2021.

20 Q. And what was the subject matter of that
21 case?

22 A. It was an Attorney General of Ohio
23 versus Making Healthy Relationships, which was a
24 nonprofit that I operated.

1 MR. SILK: Can I have a continuing
2 objection on this?

3 MR. INGRAM: Sure.

4 MR. SILK: Thanks.

5 BY MR. INGRAM:

6 Q. And you were a defendant in that case?

7 A. I was.

8 Q. And how about the second time you were
9 deposed, when did that happen?

10 A. Would have been June -- or July of 2022.

11 Q. And what was the subject matter --

12 A. Sorry, 2021. They were three months
13 apart.

14 Q. So it was July of 2021 --

15 A. Uh-huh.

16 Q. -- was your second time?

17 A. That's correct.

18 Q. And what was the subject matter?

19 A. It was the same.

20 Q. Same case?

21 A. Uh-huh. Yes.

22 Q. I can tell you recall some of the ground
23 rules from your prior depositions for
24 depositions. We are joined this afternoon with

1 Ms. Lawrence, who is our court reporter, and she
2 will be transcribing my questions and your
3 answers. And so to the extent, you know, you
4 respond to questions with uh-huhs and huh-uhs,
5 you can see how that can be ambiguous on the
6 transcript.

7 A. Sure.

8 Q. So will you try to respond with yeses
9 and nos where appropriate and without any body
10 language, you know, shaking of the head or nods
11 of the head. Those don't get transcribed very
12 well either.

13 A. Understood.

14 Q. All right. If you do not understand one
15 of my questions, Mr. Smith, please let me know,
16 and I'll do my best to rephrase or restate the
17 question. Okay?

18 A. Okay.

19 Q. And if you do not ask me to repeat or
20 rephrase a question, we're all going to assume
21 that you understood the question. Fair enough?

22 A. Yep. Sounds good.

23 Q. It's important that you and I do not
24 talk over each other. You've done well to avoid

1 that so far. So I will do my best to wait until
2 you finish your answers before I ask my next
3 question. And if you could wait until I finish
4 asking my question before you begin your answer.
5 That will make things a lot easier on
6 Ms. Lawrence.

7 A. Very good. Very professional of you.

8 Q. Mr. Smith, if you need to take a break
9 at any time during your deposition this
10 afternoon, just let me know. And I'll certainly
11 need you to finish answering whatever question
12 is pending, and then I may have a couple more
13 questions or whatever, but we'll see what we can
14 do to -- when an appropriate time would be to
15 take a break.

16 A. You can gauge my breaks based on how
17 much coffee I pour myself.

18 Q. You have a rather large mug there.

19 A. I have a lot to handle here. He did a
20 full pot here for me. So happy to share.

21 Q. Now, it's important, Mr. Smith, that we
22 get your full, complete and accurate testimony
23 today. So I have to ask you whether you have
24 taken any medication or are under any drugs or

1 anything at all that may make it difficult for
2 you to understand and answer my questions today?

3 A. No.

4 Q. Is there any reason at all why you
5 cannot give your full, complete and accurate
6 testimony today?

7 A. No.

8 Q. Now, earlier you swore an oath to tell
9 the truth for today's deposition. Do you
10 understand that that is the same oath that
11 you'll be asked to testify in court?

12 A. Yes.

13 Q. Mr. Smith, Mr. Silk is sitting here to
14 your left today. Is he your attorney?

15 A. Yes, he is.

16 Q. And what did you do to prepare for this
17 deposition?

18 A. We had a prep session.

19 Q. When was the prep session?

20 A. Two weeks ago.

21 Q. Okay. Did you speak to anyone other
22 than your attorney to prepare for today's
23 deposition?

24 A. No.

1 Q. Did you review any documents to prepare
2 for today's deposition?

3 A. Yeah, we did.

4 Q. What documents did you review?

5 A. Some of the public records from council
6 meetings.

7 Q. When you refer to public records from
8 council meetings, can you be more specific?

9 A. The December of 2020 -- all the years
10 blend together -- 2021 council meeting.

11 Q. So you reviewed the documents in the
12 public record concerning the December 2020
13 council meeting?

14 A. 2021, correct.

15 Q. You said December 2020 and then January
16 2021.

17 A. December 2021, which is, I believe, the
18 application for LC in front of council.

19 Q. Let's start with the December 2021 City
20 Council meeting. You reviewed, you said, the
21 public records concerning Lifestyle's rezoning
22 application; is that right?

23 A. We reviewed the minutes of that meeting.

24 Q. Anything other than the minutes --

1 A. No.

2 Q. -- pertaining to that meeting?

3 A. Not that I recall.

4 Q. How about the January 2022 City Council
5 meeting?

6 A. No.

7 Q. How about the February 2022 City Council
8 meeting?

9 A. No.

10 Q. Did you review any documents other than
11 the minutes from City Council's December 2021
12 meeting?

13 A. Not that I recall.

14 Q. And I should have pointed this out
15 earlier. When I say documents, I'm also
16 referring to any emails or anything in writing
17 at all.

18 A. My statement stands. Best I can recall.

19 Q. Okay. So did you review the complaint
20 that was filed in this case to prepare for
21 today's deposition?

22 A. Are you talking about in the prep
23 session, or did I individually -- can you
24 clarify that?

1 Q. Sure. My question's broader than your
2 prep session. My question is -- pertains to
3 whatever you did to prepare for today's
4 deposition, whether that was in the prep session
5 or beyond that.

6 A. I did review -- independently of
7 counsel, I did review the minutes of the January
8 2022 meeting, City Council meeting minutes, and
9 reviewed the complaint statement as well.

10 Q. Okay. Independently, to prepare for
11 today's deposition, I understand that you did
12 review the minutes from that January 2022
13 hearing?

14 A. Correct.

15 Q. The complaint that was filed?

16 A. Correct.

17 Q. Did you review any other documents to
18 prepare for today?

19 A. Not that I recall.

20 Q. Okay. Did you talk to anyone other than
21 your counsel to prepare for today's deposition?

22 A. No.

23 Q. You've been a member of City Council
24 since 2012; is that correct, Mr. Smith?

1 A. That's correct.

2 Q. Do you communicate via text message
3 about City Council matters?

4 A. No.

5 Q. Okay. Why not?

6 A. I don't like to text because I don't
7 text people back.

8 Q. Fair enough. How do you generally
9 communicate with other City Council members
10 pertaining or concerning to City Council
11 matters?

12 A. I do that in public forum.

13 Q. Do you ever have phone conversations
14 with them?

15 A. Occasionally.

16 Q. Okay. Do you ever email?

17 A. I can't say never, but I've rarely
18 emailed other councilmembers.

19 Q. Do you ever speak with City Council
20 members outside of the City Council hearings or
21 executive sessions about City Council matters?

22 A. Rarely.

23 Q. Councilman Smith, have you ever run for
24 any other offices?

1 A. I have.

2 Q. What were those?

3 A. I ran for the Ohio House of
4 Representatives in 2017. Would have been the
5 2018 election.

6 Q. Any other offices?

7 A. No, I have not.

8 Q. Being elected to City Council here in
9 Worthington in 2012 is the first office you've
10 held?

11 A. It is.

12 Q. Have you served on any boards or
13 commissions prior to being on City Council?

14 A. Prior to being on City Council, yes.
15 Yeah, I think the answer's yes to that.

16 Q. I appreciate it was in 2012.

17 A. It's hard to remember that.

18 Q. Do you recall any boards or commissions
19 prior to 2012?

20 A. I do. I served on the International
21 Board of Trustees for Circle K, which is the
22 college version of Kiwanis. I don't know if
23 that's what you're looking for, but...

24 Q. Okay. Since you've been a member of

1 City Council, what boards or commissions have
2 you served on?

3 A. The Worthington Community Improvement
4 Corporation, the CIC. I was appointed by
5 council -- sorry, recommended by council to
6 serve on the CIC as the council liaison, and
7 that was -- math -- I served for nine years, and
8 I was term limited, and it ended December '22.
9 So if you do the math backwards from that, there
10 you go.

11 Q. 2013 to --

12 A. January '14 through December of '22.

13 MR. SILK: Make sure he finishes his
14 question. Okay?

15 THE WITNESS: Got it.

16 BY MR. INGRAM:

17 Q. Any other boards or commissions that
18 you've served upon while you've been a member of
19 council?

20 A. No.

21 Q. Do you have any educational training
22 that, in your mind, has any bearing upon zoning
23 matters?

24 A. Can you define educational training?

1 Q. Sure. Did you take any college courses,
2 major in any subject matter that would have
3 bearing upon zoning matters?

4 A. I don't think so.

5 Q. Do you have any professional
6 certifications that have -- would have any
7 bearing upon zoning matters?

8 A. I have no professional certifications.

9 Q. That would have been a better question
10 to start with. Thank you.

11 what experience, Councilman Smith, do
12 you have in zoning or planned unit developments?

13 A. As a member of council, I've seen, you
14 know, zoning policies, including PUD policies in
15 front of council and discussed with staff.

16 Q. Okay. Anything else?

17 A. That's it.

18 Q. How about in connection with your
19 position on the CIC?

20 A. No.

21 Q. When you referred to zoning policies,
22 can you describe or explain what you're
23 referring to when you say zoning policies?

24 A. Yeah, zoning policies as it relates to

1 the City of Worthington, the codes, the
2 ordinances, the zoning map itself. I defer to
3 staff on the expertise that they have, but they
4 do bring that information to council for
5 educational sessions and occasionally policy
6 changes.

7 Q. Okay. And with respect to your
8 deference to staff, any particular members of
9 worthington staff that you would defer zoning or
10 plan unit development questions to?

11 A. I think by charter our council's role --
12 and my understanding is -- you know, we work
13 with the city manager directly, and then they
14 defer whatever appropriate experts on staff
15 exist, or experts in some cases.

16 Q. Generally speaking, Councilman Smith,
17 with respect to zoning or planned unit
18 development matters, would you interact with the
19 planning commission members?

20 A. No, not generally.

21 Q. Okay. Why not?

22 A. As a councilmember?

23 Q. Yes.

24 A. Do I -- can you describe that a little

1 bit more. What do you mean, interact?

2 Q. Sure. Do you email them, talk to them,
3 review any zoning applications or planning and
4 development site plans, those types of
5 interactions?

6 A. I do not interact with the zoning
7 members or the Municipal Planning Commission
8 members in that way.

9 Q. Okay. Why not?

10 A. I don't personally believe that it's my
11 job.

12 Q. So fair to say your interaction would be
13 with the city manager, to the extent you had any
14 interactions?

15 A. City manager, interactions regarding?

16 Q. A zoning or planned unit --

17 A. Yeah, I mean, standard process was --
18 they would -- city manager would bring in
19 information to council and they might defer to a
20 staff expert to talk a little bit more about a
21 specific policy or issue.

22 Q. So, for example, a staff member with
23 expertise, would you put Mr. Brown in that
24 category?

1 A. I believe the city manager has relied on
2 Mr. Brown in that capacity.

3 Q. Can you think of any other city staff
4 members?

5 A. Mr. Brown is the director of planning,
6 so I believe he is the point person for those
7 matters.

8 Q. But you yourself, can you think of
9 anyone else other than Mr. Brown?

10 A. I can't.

11 Q. Now, you mentioned you were the City
12 Council liaison to the CIC between January 2014
13 and December of 2022. In your capacity as that
14 liaison, did you attend the CIC meetings?

15 A. I did.

16 Q. Okay. Did the CIC ever discuss the UMCH
17 property?

18 A. I don't remember a time when we ever
19 discussed the property.

20 Q. And I want to be clear, what I'm
21 referring to -- when I say the UMCH property,
22 I'm referring to the property directly across
23 the street from us today.

24 A. (Nods.)

1 Q. And you're nodding your head and in
2 agreement. Do you understand which property I'm
3 referring to?

4 A. I understand the UMCH property, yes.

5 Q. Okay. And for purposes of our
6 conversation or your deposition today, I may
7 refer to it as the UMCH property, Lifestyle's
8 property, or the property. Either way, I'm
9 talking about this property directly to --
10 across the street from us today.

11 A. Yeah. For the record, I too am pointing
12 across the street and agreeing.

13 Q. Fair enough.

14 --0--

15 (Deposition Exhibit 44 marked.)

16 --0--

17 BY MR. INGRAM:

18 Q. Mr. Smith, I'm handing you what's been
19 marked as Exhibit 44.

20 A. Shall I review this?

21 Q. Yes. So for purposes of the record,
22 what's been marked as Exhibit 44 is an email
23 from Anne Brown to you and others, Bates
24 numbered worthington 51994 through 51995. Go

1 ahead and take an opportunity to review this, if
2 you want.

3 A. I am done.

4 Q. All right. You've had an opportunity to
5 review Exhibit 44?

6 A. I have.

7 Q. My first question is, just looking at
8 the top of the first page there, the email
9 address, it says Doug Smith,
10 smith@bluestreakstrategies.net. Is that your
11 email address?

12 A. At the time, yes.

13 Q. So you would have received this email
14 set forth in Exhibit 44?

15 A. Yes.

16 Q. At the time, do you recall reviewing the
17 city's talking points that are set forth on page
18 2 of Exhibit 44?

19 A. I don't recall it, but I do recall the
20 concept, yes.

21 Q. Do you recall whether you would have
22 suggested any revisions to the city's talking
23 points set forth on page 2 of Exhibit 44?

24 A. I don't recall.

1 Q. Are you aware, Councilman Smith, of
2 Project Community Park here in Worthington?

3 A. I'm familiar with the name.

4 Q. Are you familiar with what Project
5 Community Park seeks to do with the UMCH
6 property?

7 A. You're going to have to shine some more
8 light on that for me.

9 Q. You don't know?

10 A. I'm not sure what you're referring to
11 exactly.

12 Q. Okay. Well, what I'm referring to is
13 your understanding. Do you have any
14 understanding of what the Project Community Park
15 organization in Worthington is seeking to do
16 with the UMCH property, or not?

17 A. It's a tricky question. Because it
18 doesn't fully make sense to me.

19 Q. Okay. In what way?

20 A. So you referred to Project Community
21 Park as an organization, which it's not.

22 Q. Okay. What is Project Community Park?

23 A. It is a -- it is a vernacular of a
24 slogan, as far as I understand it, from some

1 residents who have a vision.

2 Q. Okay. And what is your understanding of
3 those residents' vision?

4 A. My understanding is that they -- those
5 particular residents desire green space on the
6 UMCH property, green space and mixed-use
7 commercial and residential on the property as
8 well.

9 Q. And how did you come to understand this
10 information? In other words, how do you know
11 that?

12 A. Well, my constituents are everywhere and
13 believe all sorts of things, and they talk to
14 me, and I hear things through other
15 constituents, and I can't pinpoint a specific
16 time or place where I've learned the
17 information. It's just an accumulation of
18 wisdom.

19 Q. You referred to a group of residents.
20 Do you know which residents are comprised or
21 call themselves Project Community Park?

22 A. Well, my understanding is there are a
23 thousand-plus residents on a list somewhere of
24 folks who agree with my understanding of what

1 the vision is.

2 Q. Okay. A thousand or more residents on a
3 list somewhere. Which list are you referring
4 to?

5 A. There's been made reference through
6 constituent outreach to City Council that a
7 petition of some sort exists, a list of a
8 thousand-plus residents who have agreed that the
9 vision -- that their particular vision, or a
10 variation of that vision, as I understand it,
11 exists, and that those folks had signed onto
12 that.

13 Q. Have you received or in any way reviewed
14 the petition that you're referring to?

15 A. I have. I have. Yeah.

16 Q. And when was that?

17 A. I reviewed it -- I'm trying to remember
18 when it first came out. I don't recall.

19 Q. Okay. Would it have been before October
20 of 2020?

21 A. No, I don't recall the timeline.

22 Q. Okay. When you reviewed this petition,
23 was it emailed to you in your capacity as a city
24 councilman, or not?

1 A. I don't believe anybody ever emailed me
2 the petition. I believe it's on a website
3 somewhere, public facing.

4 Q. Okay. When you reviewed the petition,
5 did you go to Project Community Park's website
6 to review it, or was it sent to you?

7 A. I believe I went to their website
8 proactively.

9 Q. Do you recall who brought that website
10 to your attention?

11 A. No, I don't.

12 Q. With respect to the group of citizens
13 of -- who are part of Project Community Park,
14 what is your understanding of who the leadership
15 or leaders are of that group?

16 A. Again, it's not a form of -- structure
17 of organization I'm familiar with, so I don't
18 know that there are leaders. I'm not sure.

19 Q. Have you attended any Project Community
20 Park meetings?

21 A. No.

22 Q. Do you remember --

23 A. Not that I'm aware of.

24 Q. To your knowledge, have you met with

1 anyone associated with Project Community Park
2 concerning the UMCH property?

3 A. Have I met with anybody concerning the
4 UMCH property? You might need to clarify that
5 question. I'm not sure I understand that.

6 Q. Okay. Do you recall any meetings with
7 any representatives from the Project Community
8 Park group?

9 A. Yes.

10 Q. And when did those meetings occur?

11 A. Within the past year, 2023.

12 Q. Was that in connection with your
13 re-election campaign?

14 A. I'll say that's fair. Uh-huh.

15 Q. Okay. And have you met with any
16 representatives from Project Community Park
17 prior to the last year?

18 A. Yes, I believe so.

19 Q. Okay. And what meeting or meetings do
20 you recall prior to 2023?

21 A. Well, I can't remember the month or
22 maybe even the year because of -- you know,
23 COVID messes everything up, but the one meeting
24 I do recall was over beers at Porch Growler.

1 Q. And that was post-COVID?

2 A. It would have been, yes. That's
3 correct.

4 Q. Would the meeting with representatives
5 from Project Community Park at the Porch Growler
6 have been before or after City Council's
7 December 2021 hearing?

8 A. We sat outside, so placing an exact
9 timeline on that, I don't remember.

10 Q. Do you recall the substance of what was
11 discussed during that meeting at the Porch
12 Growler?

13 A. I do. They -- when I say they -- yeah,
14 they were asking me about my -- my civil lawsuit
15 action and wanting to understand to the best
16 that I could share.

17 Q. Did the UMCH property come up at all in
18 that meeting?

19 A. I don't remember talking about UMCH
20 property.

21 Q. Who all was at the meeting at the Porch
22 Growler?

23 A. That was myself, Scott Taylor, and Roger
24 Beck.

1 Q. And then the meeting -- or the meeting
2 you had in 2023 with the Project Community Park
3 representatives, who attended those meetings?

4 A. Scott Taylor.

5 Q. Anyone else?

6 A. No.

7 Q. Did you have any meetings with any
8 representatives from Project Community Park
9 about the UMCH property prior to that Porch
10 Growler session?

11 A. I don't recall any meetings about that,
12 no.

13 Q. Have you worked with Councilmember
14 Robinson in connection with any Project
15 Community Park matters?

16 A. No, I don't believe so.

17 Q. And Councilman Smith, are you familiar
18 with the Worthington Alliance for Responsible
19 Development?

20 A. I am.

21 Q. You are nodding your head with a smile.

22 A. Yes.

23 Q. Okay. I'm going to refer to that
24 alliance as WARD. Fair enough?

1 A. That is fair. Yeah.

2 Q. Okay. And you've attended meetings with
3 WARD, correct?

4 A. I have, yes.

5 Q. And what is your understanding of what
6 WARD seeks for the UMCH property?

7 A. You know, they've been consistent all
8 along with kind of their -- what I would call
9 modus operandi, their MO of existence as a
10 resident group, and really promoting responsible
11 development throughout the city and including
12 the UMCH property. I believe one of their more
13 recent positions on paper documented and
14 submitted to council was in line with that --
15 and I'm paraphrasing here based on my
16 understanding -- was green space, mixed-use
17 commercial and development apartments -- or
18 sorry, commercial and residential.

19 Q. Okay. So mixed-use of commercial and
20 residential, what style residential?

21 A. You'd have to ask them exactly.

22 Q. You said apartment, and then -- I wanted
23 a clarification of what your testimony is.

24 A. Yeah, strike apartment. Just mixed-use

1 commercial and residential.

2 Q. And you don't know whether it's
3 apartments or what style residential; is that
4 fair?

5 A. I don't know that they've expressed
6 exactly the type of residential stock. They may
7 have that somewhere. I don't remember seeing
8 it.

9 Q. And with respect to WARD, what is your
10 understanding of what type of organization is
11 it?

12 A. Today I believe it's a city resident
13 group. I believe they do have a PAC that
14 they've submitted. I don't remember when. But
15 at some point through their existence they
16 decided to have a PAC, but they've always been
17 pretty strong with their just being a resident
18 group and having neighbors, you know, join the
19 organization.

20 Q. Okay. And with respect to the WARD
21 organization, who, in your mind, constitutes
22 their leaders?

23 A. They have what's called a planning
24 group, and that is the -- what you might

1 consider their leadership.

2 Q. And who all is on that planning group,
3 to the extent you know?

4 A. I can think of Michael Bates, Beth
5 Mitchel, Eric Gnezda, and that's all. Those are
6 the only names I can recall.

7 Q. Do you know about how large that
8 planning group is, how many people?

9 A. Five or six.

10 Q. And going back to your tenure on City
11 Council in 2015 and '16, you've had several
12 meetings with WARD representatives, correct?

13 A. I would say I've had several meetings
14 with WARD representatives over the past 12
15 years, yes.

16 Q. And those meetings pertain to the UMCH
17 property; fair enough?

18 A. They relate to development in general,
19 of which UMCH property is a topic on some
20 occasions.

21 Q. Fair to say that UMCH is a rather
22 significant topic to the folks in the WARD
23 organization?

24 A. I'm not going to speak for them.

1 Q. All right. How about your understanding
2 based on all the meetings you've had with that
3 organization over the past decade?

4 A. Well, they are constituents, and as a
5 constituent residential group I'm there to
6 listen and help and represent wherever I can.

7 Q. Okay. I asked a slightly different
8 question, but we'll move on.

9 Do you know about how many members there
10 are that -- of WARD?

11 A. Outside the planning group, I don't
12 know.

13 Q. Are you familiar with a paper called The
14 Spectator?

15 A. I am familiar.

16 Q. What is The Spectator?

17 A. I believe it's an ad hoc publication
18 that informs residents of community issues and
19 topics.

20 Q. Is The Spectator printed on behalf of
21 the city, or does the city have any involvement
22 with The Spectator?

23 A. I don't believe so.

24 Q. Do you recall preparing an article for

1 The Spectator back in June 2015 pertaining to
2 the UMCH property?

3 A. Vaguely the idea, yes.

4 Q. Okay. And what do you recall from that?

5 A. I recall it exists. That's about it.

6 Q. And in connection with your article in
7 The Spectator, WARD agreed to provide support to
8 you; isn't that fair?

9 A. I wouldn't say that.

10 Q. No?

11 A. I would not say that.

12 Q. Why not?

13 A. I don't know what you're talking about,
14 first of all. I'm not sure if WARD has anything
15 to do with what you're talking about. I'm going
16 to need some clarification.

17 Q. You don't recall one way or the other?

18 A. I don't recall.

19 Q. Do you recall at all what you wrote
20 about the UMCH property in The Spectator in June
21 of '15?

22 A. I don't remember.

23 Q. Did you keep any copies of the article
24 or drafts of the article that you prepared?

1 A. I don't think so.

2 Q. You said you don't think so. Do you
3 know?

4 A. Do I know if I kept some records?

5 Q. Yes.

6 A. No, I don't know if I kept records.

7 Q. Did you assist WARD in preparing a
8 survey pertaining to the UMCH property?

9 MR. SILK: Objection to form.

10 Go ahead.

11 A. I was aware of the survey and did
12 provide some guidance to make an objective
13 survey.

14 Q. Okay. And what survey are you referring
15 to?

16 A. There was a community survey. I can't
17 remember the timeline on that. You just stated
18 a year. 2015?

19 Q. 2016.

20 A. 2016? I can't confirm that timeline,
21 but between 2014 and 2017, I did help them with
22 a survey, with guidance on making an objective
23 methodology based on point methodologies
24 specific to getting public feedback about

1 responsible development.

2 Q. Okay. So the survey concerned, you
3 said, responsible development. Can you help me
4 understand what the survey was seeking and to
5 whom you were surveying?

6 A. Yeah. Gosh, you're asking from a
7 lifetime ago. I just know my background prior
8 to that point in public polling and market
9 research, the WARD group asked if there was any
10 way I could give them some guidance, I guess, in
11 informing questions that they would -- that they
12 would then ask the public at large, all the
13 residents. As a councilmember and a market
14 strategist, I guess, I always like to get data
15 and information, get feedback from people in the
16 most objective way possible. So what those were
17 and the questions themselves I can't remember,
18 but I know the general take was certainly, you
19 know, to get public feedback.

20 Q. Okay. And in connection with your
21 assistance on WARD's survey, did you keep any of
22 the work or any notes that you would have
23 prepared in connection with that work?

24 A. I'm not really a note taker. I don't --

1 I can't recall if I have any notes, and if I
2 ever did, they're probably long gone; so...

3 Q. How about any of the actual survey
4 questions or survey results, did you keep that?

5 A. I believe WARD has those. I don't.

6 Q. And what did you do with the results
7 from WARD's survey that you helped prepare?

8 MR. SILK: Objection to form.

9 Go ahead.

10 A. So I guided them in the process which
11 led to them hiring a polling consultant, and
12 that particular person was in charge of the
13 oversight of data collection, I guess is how I
14 might qualify that. And so I know the output of
15 the results was basically a WARD outcome
16 statement, here's what the public thinks and so
17 on.

18 Q. Which polling firm did WARD use?

19 A. I don't think it was a firm. I think it
20 was an individual who specialized in polling.

21 Q. And who was that?

22 A. I believe it was Dr. Erin Armstrong
23 from -- I'll leave it at that.

24 Q. What did you do with the survey results,

1 if anything?

2 A. Personally?

3 Q. Yes.

4 A. Much like any individual in the
5 community, I absorbed the information. As a
6 member of council, obviously, it's one data
7 point in a bunch of data points that become part
8 of my kind of tapestry of decision-making
9 process.

10 Q. Did you share the survey results with
11 anyone on council?

12 A. I believe they were publicly available.

13 Q. My question is a little bit different.
14 Did you share the survey results with anyone
15 from council?

16 A. I don't believe I did.

17 Q. Do you recall whether you shared the
18 survey results with anyone at all?

19 A. I don't see why I would have. They were
20 publicly available. I don't recall sharing them
21 with anybody.

22 Q. I want to ask you about Lifestyle's
23 rezoning application that was filed in October
24 of 2020. Do you recall that?

1 A. I do.

2 Q. When Lifestyles filed the application,
3 when did you first read it? Or did you read?

4 A. Those are two different questions.

5 Q. Let's start with did you read it or not
6 first?

7 A. I only read it when it -- when it was
8 brought to council's attention much later in the
9 process. So yes, I did read it.

10 MR. SCHUMCHER: Make sure he doesn't
11 mark exhibits twice. That makes more paper for
12 Rhonda to carry.

13 --0--

14 (Deposition Exhibit 46 marked.)

15 --0--

16 BY MR. INGRAM:

17 Q. Councilman Smith, you've been handed
18 what's been marked as Exhibit 45, which is an
19 email from Lee Brown to you and others, dated
20 October 5, 2020.

21 A. Do you want to confirm that that's a 45?

22 Q. That is Exhibit 45, but I do have
23 terrible handwriting.

24 MS. TAFT: I should have written them.

1 Sorry.

2 A. Lawyer's writing, hmm. I do have
3 Exhibit 45. And it is an email from -- appears
4 to be an email from Lee Brown.

5 Q. And take a moment to review the email.

6 A. Okay. I've reviewed it.

7 Q. And so does this refresh your
8 recollection, Councilman Smith, that council was
9 notified of Lifestyle's rezoning application as
10 of October 5, 2020?

11 A. Council was notified, according to this
12 email, yes.

13 Q. And so did you -- I'm trying to
14 understand whether you reviewed Lifestyle's
15 application or site plan?

16 A. At this point?

17 Q. Did you ever?

18 A. I reviewed the application when it was
19 in front of council for sure. At this point,
20 when council was notified of the application, I
21 likely did not, and I have no recollection of
22 reviewing it.

23 Q. When's the first time you recall
24 reviewing Lifestyle's application?

1 A. The first time I recall is the week
2 leading up to the December of 2021 council
3 meeting where council had to vote on it.

4 Q. And with respect to that week leading up
5 to City Council's hearing on Lifestyle's
6 application, what did you review? What did you
7 read?

8 A. Leading up to the meeting, council was
9 provided a packet of information from staff, an
10 agenda packet. That's all public record, of
11 course. And I review -- in that particular
12 packet, there were the MPC, Municipal Planning
13 Commission, meeting minutes for the pertinent
14 meetings, and staff notes and memos, memorandum.
15 And then there were some additional pieces of
16 information and the application itself.

17 Q. With respect to additional pieces of
18 information, what are you referring to?

19 A. I think not included in the packet
20 specifically, but the constituents, the
21 residents, of course, are allowed to email
22 council at any time regarding any issue, and
23 when a communication from a resident to council
24 is pertinent, relates to a specific topic, then

1 I go back and review those -- those
2 correspondence. So that's additional pieces of
3 information.

4 Q. Did you review anything else?

5 A. Everything that was included in the
6 packet I reviewed. I think I mentioned
7 everything that was in the packet. May have
8 missed something.

9 Q. Did you do any independent research?

10 A. Such as?

11 Q. In other words, did you review the
12 zoning code, the comprehensive plan, any of the
13 other --

14 A. Well, most of that was cited in the
15 staff memos and MPC minutes, so I felt
16 comfortable with the package.

17 Q. So is the answer to my question, no, you
18 didn't review anything else other than what was
19 in the packet and the additional information?

20 A. Correct.

21 Q. Okay. So did you review any of
22 Lifestyle's materials at all between October of
23 2020 and January of 2021 in connection with the
24 planning commission's review and consideration

1 of the application?

2 A. No, not that I recall.

3 Q. Did you talk to anyone during that time
4 frame?

5 A. No, not that I recall.

6 Q. During the time that Lifestyle's
7 application was before the planning commission
8 and Architectural Review Board -- well, first of
9 all, the planning commission and Architectural
10 Review Board, can we just agree to refer to it
11 as the planning commission?

12 A. Please do.

13 Q. Okay. Thank you. Let me start over,
14 then. During the time that Lifestyle's
15 application was pending before the planning
16 commission, did you ever talk with any member of
17 the planning commission concerning that
18 application?

19 A. No.

20 Q. Similar question, did you email or write
21 anything to any member of planning commission
22 during that time frame?

23 A. No.

24 Q. Did you ask anyone to convey anything on

1 your behalf to the planning commission
2 pertaining to the application?

3 A. No.

4 Q. Did you attend any of the planning
5 commission hearings -- I believe there were two,
6 on the Lifestyle's application?

7 A. No.

8 MR. SILK: Can we take a quick break? I
9 think Paul's getting ready to --

10 MR. SCHUMCHER: Don't break on my
11 account.

12 MR. SILK: Well, I want to talk to you.
13 Is that all right?

14 MR. INGRAM: Yes.

15 (Recess.)

16 (Mr. Schumacher not present.)

17 BY MR. INGRAM:

18 Q. All right. Councilman Smith, we are
19 back from our first break this afternoon, and we
20 were talking about the time frame when
21 Lifestyle's rezoning application was pending
22 before the planning commission. Do you recall
23 that?

24 A. Yes, I recall.

1 Q. And so that would be roughly -- call it
2 December 2020 through October of 2021, fair?

3 A. Yes.

4 Q. And I just want to have an understanding
5 with your involvement, or lack thereof,
6 concerning Lifestyle's application during that
7 time frame, and since you -- earlier you said
8 you didn't review anything until the week before
9 City Council's hearing, right?

10 A. Correct.

11 Q. Okay. Now, with respect to the duration
12 while the application was pending before the
13 planning commission, did you meet with or talk
14 to any representatives from WARD while
15 Lifestyle's application was pending?

16 A. '21. No, I don't believe.

17 Q. Did you meet with any representatives
18 from Project Community Park about Lifestyle's
19 application while the application was pending
20 before the planning commission?

21 A. Not about -- not about the application,
22 no.

23 Q. Do you recall meeting with them about
24 something else?

1 A. I believe that's the time frame that I
2 mentioned earlier, yeah, at the beers.

3 Q. Project -- I'm sorry, Porch Growler?

4 A. Porch Growler. Yeah.

5 Q. Did you meet with any representatives
6 from Lifestyle while the Lifestyle application
7 was pending before planning commission?

8 A. No.

9 Q. Did you meet with anyone about
10 Lifestyle's application while that application
11 was pending before the planning commission?

12 A. No.

13 Q. Did you watch the planning commission's
14 first hearing on Lifestyle's application?

15 A. I did not.

16 Q. Did you review the minutes from that
17 hearing?

18 A. I did.

19 Q. And when did you review those minutes?

20 A. The week prior to the December council
21 meeting.

22 Q. That would have been in the packet of
23 materials you referenced?

24 A. Uh-huh.

1 Q. Did you watch the October 14, 2021,
2 planning commission hearing on Lifestyle's
3 application?

4 A. No.

5 Q. But you reviewed the minutes from that
6 hearing?

7 A. I did.

8 Q. So, now, once the planning commission
9 made its recommendation to City Council in
10 October of 2021, let's talk about what you did
11 or didn't do in connection with City Council's
12 review of that application. So, first off, did
13 you meet with or talk to anyone about
14 Lifestyle's application during that time frame?

15 A. No.

16 Q. Do you recall sending any emails to
17 anyone about Lifestyle's application during that
18 time frame?

19 A. I don't believe so.

20 Q. Did you send any text messages to anyone
21 concerning Lifestyle's application --

22 A. No.

23 Q. -- during that time frame?

24 A. Sorry. No.

1 Q. And I apologize if I already asked you
2 this, but did you meet with anyone concerning
3 their application during that time frame?

4 A. No.

5 Q. Did you review Lifestyle's revised
6 concept plan that was presented to the planning
7 commission during that prior hearing?

8 A. I'm not sure. Do you mean as part of
9 the packet leading up to the council meeting or
10 for the planning commission?

11 Q. Let me clarify. So I'm asking you about
12 the time frame after planning commission made
13 its recommendation to council. Did you review
14 Lifestyle's concept plan that Lifestyles
15 proposed at the October 14, 2021, planning
16 commission meeting?

17 MR. SILK: I'm going to object based on
18 lack of foundation, but go ahead.

19 A. I guess, is that part of the
20 application? Are you referring to something as
21 part of the application?

22 Q. Okay.

23 A. If it was part of the application, yes.

24 Q. All right. Well, let's back up.

1 A. Yeah.

2 Q. And you'll recall that Lifestyle applied
3 in October of 2020?

4 A. (Nods.)

5 Q. Do you recall that?

6 MR. SILK: A verbal answer.

7 A. Yeah.

8 Q. You nodded your head yes.

9 A. Yes, I do recall that.

10 Q. And do you recall, in the October 14,
11 2021, planning commission hearing, Lifestyles
12 proposed a revised concept plan?

13 A. Yes, I'm aware of that in concept, yes.

14 Q. Commission did not permit Lifestyles to
15 amend its application to address that revised
16 concept plan?

17 MR. SILK: Objection to form.

18 Go ahead.

19 A. As whatever was stated in the minutes, I
20 was aware of that.

21 Q. So is the answer to my question yes, you
22 do recall that?

23 A. I don't remember those exact words in
24 the minutes, but the concept. The concept of

1 what you're talking about being in the minutes,
2 yeah.

3 Q. All right. So you recall that
4 Lifestyles was not permitted to amend its zoning
5 application to incorporate that concept plan?

6 MR. SILK: Same objection.

7 Go ahead.

8 A. I guess I don't understand the question,
9 but I'm going to take a stab here and say it was
10 in minutes -- not those exact words, I don't
11 believe. My understanding is I'm going to
12 answer yes to you.

13 Q. Okay. Sure. And so previously my
14 questions pertaining to Lifestyle's application,
15 same questions regarding that concept plan.
16 Because you had one document which was 400-plus
17 pages of the rezoning application and the
18 development plan, shall we say?

19 A. We can say that.

20 Q. Okay. And then you had the concept plan
21 which was, you know, PowerPoint materials, you
22 know, a high-level plan that was proposed to the
23 planning commission, different document?

24 A. Right.

1 Q. Right?

2 A. Right.

3 Q. Okay. Did you talk to anyone about
4 Lifestyle's concept plan prior to the December
5 2021 City Council hearing?

6 A. No.

7 Q. Did you review that concept plan prior
8 to the City Council December hearing?

9 A. I don't recall reviewing it. If it was
10 part of the minutes in the package, I did.

11 Q. Did you talk to anyone prior to that
12 December 2021 meeting about Lifestyle's concept
13 plan?

14 A. No.

15 Q. During City Council's December 13, 2021,
16 meeting, do you recall Mr. Hart's request of
17 City Council to refer Lifestyle's application
18 back to planning commission with instructions
19 that council provide a genuine and collaborative
20 effort with respect to the development proposal
21 and empower city staff to communicate and work
22 directly on the development plan and serve as a
23 liaison to the planning commission and council,
24 and that Lifestyles be afforded the opportunity

1 to amend their initial zoning application with a
2 revised site plan, as was initially discussed
3 with staff, and be afforded a full hearing at
4 the planning commission to work through that
5 revised application?

6 MR. SILK: Objection. Did you mean that
7 to be a question? Because there's a lot in
8 there. Are you just asking him that's a quote
9 from something?

10 MR. INGRAM: I'm asking him if he
11 recalls that.

12 MR. SILK: Okay. Recalls that exact
13 statement; that's what you're asking him?

14 MR. INGRAM: Correct.

15 A. I don't recall that exact statement, no.

16 Q. Okay.

17 A. That's a lot of words, for the record.

18 Q. I'm handing you what's been previously
19 marked as Exhibit 43, Councilman Smith. And
20 you'll see Exhibit 43 containing minutes from
21 the December 13 City Council meeting?

22 A. Yes.

23 Q. And to refresh your recollection, I
24 would direct your attention to page 3.

1 MR. SILK: Read as much as you need.

2 A. I've read that portion.

3 Q. So does that refresh your recollection
4 that Attorney Hart, in his presentation to
5 council, made three requests to members of City
6 Council that evening: First, to refer the
7 application back to the planning commission with
8 instructions they should provide a genuine and
9 collaborative effort with respect to the
10 development proposal; second, empower the city
11 staff to communicate and work directly on the
12 development plan and serve as a liaison to the
13 planning commission and council; third, they be
14 afforded the opportunity to amend their initial
15 zoning -- or rezoning application with a revised
16 site plan, as was initially discussed with
17 staff, and be afforded a full hearing at the
18 planning commission to work through that revised
19 application?

20 Do you recall that now, Mr. Smith?

21 A. As written in the City Council minutes
22 for December 13, 2021, yes, that's correct.

23 Q. Okay. My question is a little bit
24 different. I understand that's what's written

1 in the minutes. You were there that evening as
2 a member of council. Do you recall that?

3 A. I do recall that, yeah.

4 Q. Okay. So why, Councilman Smith, did you
5 decline the opportunity to refer Lifestyle's
6 application back to the planning commission as
7 Mr. Hart requested?

8 MR. SILK: Objection to form.

9 Go ahead.

10 A. Council's job is to vote on the policy
11 in front of them. In this case, none of those
12 requests were policies in front of council to
13 vote yes or no on.

14 Q. Okay. Councilman Smith, however,
15 Councilman Dorothy made a motion to send the
16 rezoning application back to the planning
17 commission. Do you recall that?

18 A. I do recall.

19 Q. There was no second, correct?

20 A. Correct.

21 Q. Okay. Why did you decline the
22 opportunity, as a member of council, to second
23 or support Ms. Dorothy's motion?

24 A. As one member of council, I believe our

1 job is to vote on the policy question in front
2 of us, yes or no. As you said, Ms. Dorothy did
3 not receive a second; therefore, it was not a
4 policy question.

5 Q. Is that the only reason you did not
6 support Ms. Dorothy's motion?

7 A. The reason that I wanted to vote on the
8 question -- I guess my answer is the reason I
9 wanted to vote on the question at hand, which
10 was the policy question.

11 Q. Any other reasons, other than you wanted
12 to vote on the Lifestyle's application as it was
13 initially filed?

14 A. Correct.

15 Q. No other reason?

16 A. I don't see -- if there was no question
17 in front of us, there was nothing to consider.

18 Q. Okay. With respect to Ms. Dorothy's
19 motion, that was a question before council, and
20 before you is as a voting member of council. I
21 just want to understand what reasons you had, if
22 any, to not support her motion?

23 MR. SILK: Objection. Form.

24 Argumentative.

1 Go ahead.

2 A. I mean, Ms. Dorothy is one member of
3 council, and I'm one member of council, and
4 we're each -- you know, it's an open forum,
5 Robert's Rules type of organization where
6 anybody can make any motion at any point.
7 Doesn't mean it's an actionable question of
8 policy in front of us. In this case, her motion
9 was not. So I didn't support it.

10 Q. Why did you vote to deny the approval of
11 Lifestyle's application, then?

12 A. Reviewing all the information provided
13 in the package, the minutes, the planning
14 commission minutes and the staff memos and
15 recommendations, reviewing the application,
16 hearing responses, communications from
17 residents, constituents, hearing the applicant
18 themselves talk about the application at the
19 meeting December 13th, I just -- there wasn't a
20 good enough reason to vote yes.

21 Q. Okay. Other than based on the materials
22 you reviewed during the meeting and leading up
23 to the meeting that there wasn't a good enough
24 reason to vote yes, was there any other reasons

1 why you did not vote to approve the rezoning
2 application?

3 A. I make decisions as one member of
4 council. My thought process and decision-making
5 process is very much what I just described to
6 you.

7 Q. When you say there wasn't a good enough
8 reason, what were you looking for in connection
9 with the rezoning of Lifestyle's property?

10 MR. SILK: Objection.

11 Go ahead.

12 A. Yeah, you know, looking at the minutes
13 over the past year from initial application,
14 staff comments and memo and the information
15 provided, the resident feedback, you know,
16 it's -- it just wasn't good enough, so I voted
17 no.

18 Q. When you say it wasn't good enough, what
19 standard were you applying; in other words, what
20 benchmark or what bar did they have to overcome,
21 in your mind, to get your vote?

22 MR. SILK: Objection. Form. He
23 answered the question what he considered.

24 Go ahead.

1 A. I believe I already answered that based
2 on what I considered. I'm one member of
3 council, and how I determine decisions of
4 policies is very much based on all those facets
5 for pretty much every policy that comes in.

6 Q. Anything else other than it wasn't good
7 enough in your mind? Was there any other reason
8 that you voted to deny the approval of
9 Lifestyle's application?

10 A. I believe that's a pretty comprehensive
11 look from my part to what I would say every time
12 I vote on a policy yes or no to justify my vote
13 as one member of council, so no, I have no
14 reason other than that.

15 --0--

16 (Deposition Exhibit 46 marked.)

17 --0--

18 BY MR. INGRAM:

19 A. I've reviewed document 46.

20 Q. All right. So Councilman Smith, you've
21 been handed what's been marked Exhibit 46, which
22 is the summer 2005 -- or 2015 issue from Village
23 Talks, the official newsletter of the City of
24 Worthington, and the article is entitled "UMCH

1 Development Information." Do you see that?

2 A. I do. Blast from the past.

3 Q. What is the Village Talks publication?

4 A. It's the official newsletter of the City
5 of Worthington.

6 Q. Okay. And this is -- Exhibit 46 was put
7 out on behalf of the City of Worthington; is
8 that fair?

9 A. Correct.

10 Q. Okay. In your capacity as a member of
11 City Council, did you have an opportunity to
12 review or revise Exhibit 46?

13 A. Review or revise it prior to it being
14 published?

15 Q. Yes.

16 A. I don't think that -- I don't believe
17 so. That's not common practice.

18 Q. Okay. Councilman Smith, I understand
19 that City Council conducts annual retreats?

20 A. We do. We try to.

21 Q. Okay. Fair enough. And those are
22 public meetings?

23 A. They are.

24 Q. In 2018, do you recall that particular

1 City Council retreat?

2 A. Not specifically, no.

3 Q. If you could turn to what's been
4 previously marked Exhibit 27. I want to refresh
5 your recollection.

6 Can you recall, Councilman Smith, just
7 briefly here, Management Partners facilitated
8 the 2018 City Council retreat?

9 A. That's what it appears, yeah. I'm
10 trying to remember, but yeah, that's what it
11 says.

12 Q. And Exhibit 27 is a memorandum that
13 Management Partners provided to the city manager
14 and assistant city manager summarizing the City
15 Council discussion during that retreat, fair?

16 A. Just give me a moment.

17 Q. Sure. Councilman Smith, I can see
18 you're on page 6. I'll help you out, I'm going
19 to be asking you about the contents of page 3.

20 A. Good to know. Thank you.

21 Do you know where this was? I'm trying
22 to --

23 Q. Oh, the location?

24 A. Uh-huh. We jump around.

1 MS. TAFT: Worthington Education Center.

2 Q. The 2018 retreat, do you recall it
3 occurring at the WEC?

4 A. Yeah, I can recall that.

5 Q. All right.

6 A. It's not the only time we met at the
7 WEC, but in that time frame I think -- I think
8 it's the one I'm thinking of, so yes. Please go
9 on.

10 Q. Specifically, I wanted to ask you about
11 City Council's discussion on Saturday, February
12 10, 2018, that pertained to the UMCH site. And
13 as set forth in Exhibit 27 on page 3, I want to
14 direct your attention to the discussion points
15 that were captured. Let me know when you get
16 there.

17 A. I see the discussion points on page 3,
18 yes.

19 Q. Have you had an opportunity to review
20 this?

21 A. I just reviewed them, yes.

22 Q. So City Council discussed the desired
23 uses for the UMCH property during that session,
24 correct?

1 A. That's one of the points, yes.

2 Q. And do you recall that discussion,
3 participating in that discussion?

4 A. Not specifically, no.

5 Q. Do you recall, then, whether a
6 commercial mixed-use along High Street was a
7 desired use for the UMCH property?

8 A. During this conversation, you're
9 referring to?

10 Q. Yes.

11 A. I don't recall that.

12 Q. And this line of questioning is
13 pertaining to that Saturday, February 10
14 discussion at the City Council retreat in 2018.

15 A. Very good.

16 Q. Okay. Do you recall the discussion of a
17 park amenity or green space being a desired use
18 of the UMCH property?

19 A. I don't recall that.

20 Q. And Management Partners noted that in
21 connection with any park amenity or green space,
22 a need to determine the appropriate size. Do
23 you see that?

24 A. Yeah, it does say that.

1 Q. who would make the determination of the
2 size of any park or green space on the UMCH
3 property?

4 A. Number of factors to that. There's
5 public engagement with a property owner, a
6 potential developer, a process of Municipal
7 Planning Commission, and then ultimately
8 possibly getting approved by City Council.

9 Q. As a member of City Council, do you
10 agree or not that a park amenity or green space
11 should be developed on the UMCH property?

12 A. As an individual member of council, I
13 think it would be -- it would be nice to have
14 green space amenities.

15 Q. Okay. And of what size?

16 A. I don't want to say something specific,
17 but conceptually significant.

18 Q. Okay. And can you provide or elaborate
19 on the context of what you describe as
20 significant?

21 A. Programmable. So being able to -- for
22 the record, I'm getting looks of confusion from
23 opposing counsel, so I'll elaborate.

24 Programmable in the sense of the parks and recs

1 industry is very much, you know, can you play
2 soccer, can you have a children's activity,
3 something like that that's a program activity.

4 Q. Okay. You said, with respect to any
5 park amenity or green space, that it should be
6 significant and programmable?

7 A. Programmable would be ideal
8 conceptually, yes.

9 Q. Okay. And with respect to a
10 programmable park amenity or green space, other
11 than a soccer field, are you aware of anything
12 else, or are you anticipating soccer fields on
13 that site?

14 A. No. I don't -- I'm in no position to
15 dictate what's there and mandate or anything
16 like that, but I think, conceptually,
17 programmable soccer is one example of a
18 programmable space where you can -- you can have
19 an activity, whether it's a team sport or a --
20 you know, a field day activity, something like
21 that.

22 Q. Okay. Help me understand, when you're
23 referring to a programmable activity, I mean, do
24 you have anything specific in mind or not, other

1 than a soccer field?

2 A. I don't have anything particular in
3 mind, even including a soccer field. I think
4 there's a whole variety. I'm not a parks
5 specialist, so I defer to our people out in the
6 community who live that world, and youth
7 boosters and stuff like that who understand that
8 world. I try to avoid team sports whenever
9 possible. So, you know, it's very much a
10 variety. There's a spectrum of programmable
11 space, anything from a playground to a -- all
12 the way up to a soccer field and anything in
13 between.

14 Q. Okay. Earlier you did mention that City
15 Council would play a role in the development --
16 the future development of the UMCH site, right?

17 A. I don't believe that's what I said, no.
18 I can say that City Council would possibly get
19 to make a decision on approval or not of any
20 development that's proposed.

21 Q. Because earlier when I asked, you listed
22 the process would be public engagement,
23 landowner's input, developer's input, planning
24 commission's input, City Council. So that's

1 what I'm referring to.

2 A. I think I specifically said possibly
3 City Council. We can have the record read back
4 to us, if you'd like.

5 Q. Okay. So, in your mind, does City
6 Council have a role or not in the future
7 redevelopment of the future UMCH site?

8 A. City Council has policy questions that
9 are in front of them, and if those policy
10 questions come in front of them, they vote yes
11 or no based on what's in front of them. As far
12 as being an elected official representing the
13 community, it's always, you know, a good idea
14 for any elected official to get feedback from
15 the community and understand what the
16 temperature is, so to speak, what the feelings
17 are, what the thoughts are from all the
18 stakeholders, including the resident
19 constituents, property owners, other
20 stakeholders who might be involved.

21 Q. Okay. And with respect to determining
22 the appropriate size of any park amenity or
23 green space that is programmable, what source or
24 resource would you, in your capacity as a member

1 of City Council, refer to to determine what's
2 appropriate or not?

3 MR. SILK: I'm going to object as to
4 foundation, but go ahead.

5 A. You're talking hypothetically, like in
6 concept what would be a --

7 Q. I'm talking about in connection with
8 City Council's discussion about a desire to have
9 a park amenity or green space on the UMCH site.
10 You then in connection with that have told me
11 that you yourself desire a significant park
12 amenity or green space that is -- functions as
13 something as programmable. And I'm trying to
14 understand, you know, is there any resource or
15 source you would go to to determine how much?

16 A. I see. I understand. Personally, what
17 resource am I questioning?

18 Q. Yes.

19 A. I think, as an elected official
20 representing the community, my resource would be
21 all the facets of a process that exists to, you
22 know, accumulate information, and a lot of that
23 is resident feedback, of course, what the needs
24 are in the community, what a developer or

1 property owner is interested in and willing to
2 work with the community on.

3 Q. Okay. Is there any specific documents,
4 plans, guidelines, anything specific you would
5 refer to?

6 A. I mean, there's a smorgasbord of
7 information out there. One document that would
8 be a part of, again, a broader pool of
9 information, you know, we have comprehensive
10 plan documents. We have, you know, resident
11 feedback, documents, white papers. We've got
12 emails from hundreds of folks in the community,
13 and then also the desires of any developer or
14 property owner.

15 Q. Okay. Anything else influence your
16 thinking on what would be an appropriate park
17 amenity, green space or programmable park on the
18 UMCH site?

19 MR. SILK: Objection. Asked and
20 answered.

21 Go ahead.

22 A. I don't think so.

23 Q. Back in 2018, City Council discussed
24 preparing a density analysis or density analyses

1 scenarios for the UMCH site. Do you recall that
2 discussion?

3 MR. SILK: Objection. Form.

4 A. I do not recall that discussion.

5 Q. Okay. Do you know whether a density
6 analysis of the UMCH site was ever prepared?

7 MR. SILK: Same objection.

8 Go ahead.

9 A. I am aware of a basic governmental
10 analysis of different types of development and
11 how they impact city finances. I don't know if
12 that's the same thing, but in my mind --

13 Q. Is there anything other than
14 Mr. Greeson's analysis that was provided to
15 council?

16 A. No, not that I'm aware of.

17 Q. Now, according to Management Partner's
18 summary of City Council's discussion on February
19 10 of 2018, there was discussion about the
20 potential for revenue generation at the UMCH
21 site. Do you recall what revenue generation was
22 discussed?

23 A. For the record, with the previous
24 statement, I'm not aware that that was

1 Mr. Greeson's analysis. Very well could have
2 been, but I can't confirm that.

3 This question, I don't recall any --
4 what was the word you used? Revenue --

5 Q. It's the last bullet point there on page
6 3.

7 A. Revenue generation.

8 Q. Yes.

9 A. I don't recall that specific
10 conversation. Unless it had to do with that
11 same report I just mentioned.

12 Q. You don't recall one way or the other?

13 A. Let's make that my answer. I don't
14 recall.

15 Q. Okay. On February 9 of 2019, City
16 Council conducted another retreat. Do you
17 recall that?

18 A. Yes.

19 Q. And Dr. Herb Marlowe was the
20 facilitator?

21 A. Yes.

22 Q. Do you recall what you said about any
23 future application that Lifestyle proposed for
24 the UMCH site?

1 A. I don't recall saying anything.

2 Q. If you could turn to Exhibit 31,
3 Councilman Smith.

4 A. That's summary of phases for
5 development.

6 Q. For purposes of the record, Exhibit 31
7 is a summary of phases for the development of
8 the UMCH property dated November 27, 2018,
9 prepared by Attorney Adam Florey. Do you see
10 that?

11 A. I do see that, yeah.

12 Q. Go ahead and take your time to review
13 Attorney Florey's summary.

14 A. Okay. I've reviewed it.

15 Q. Have you had an opportunity to review
16 Exhibit 31?

17 A. Yes.

18 Q. Great. When's the first time you've
19 seen Exhibit 31?

20 MR. SILK: Objection. Form.

21 Go ahead.

22 A. I don't -- I don't remember seeing this.
23 I think this is the first time I've seen it.

24 Q. Do you think, or do you know?

1 A. I don't know if this is the first time
2 I've seen it, but this is the first time I can
3 recall seeing this document.

4 Q. Okay. Looking at the second paragraph
5 there on the first page, it says, a more
6 detailed memorandum is provided along with this
7 summary. Do you see that?

8 A. Yeah, I do see that.

9 Q. Have you reviewed or been provided a
10 copy of that memorandum?

11 A. I have not.

12 Q. Have you had any discussions with
13 Council President Robinson regarding
14 Mr. Florey's summary?

15 A. No, not that I recall.

16 Q. Have you had any discussions with
17 Council President Robinson regarding Attorney
18 Florey's memorandum?

19 A. No, not that I recall.

20 Q. Just for clarity, my next line of
21 questions will be pertaining to Exhibit 1.
22 Exhibit 1 is the 2014 amendment to the city's
23 comprehensive plan that applied to the UMCH
24 property. Do you see that?

1 A. I see it, yes.

2 MR. SILK: Do you want him to read it?

3 Q. No. Just review it and make sure you
4 understand what's in Exhibit 1. I'm not going
5 to ask anything specific to it.

6 A. Okay.

7 Q. At least I don't intend to.

8 A. I have seen this before.

9 Q. Okay. For the sake of my questions, I'm
10 going to refer to Exhibit 1 as the land use
11 plan.

12 A. Okay.

13 MR. SILK: Objection to that form.

14 Go ahead.

15 Q. Just to distinguish it from the city's
16 comprehensive plan.

17 A. Got it.

18 Q. Councilman Smith, you supported amending
19 the land use plan, correct?

20 A. In 2014, yes, I did.

21 Q. And then thereafter, do you recall that
22 Councilman Robinson sought to amend the land use
23 plan in September of 2020?

24 A. I do recall that, yes.

1 Q. Okay. And did you support amending the
2 land use plan in September of 2020?

3 A. I wouldn't say that.

4 Q. Okay. What would you say?

5 A. I would say I supported the idea of
6 talking in more depth about the -- what you
7 referred to as the land use plan in September of
8 2020.

9 Q. I'm going to direct your attention here
10 to Exhibit 34. And my question pertaining to
11 Exhibit 34 -- I'll give you a chance to read it
12 here in a second -- but just to help you, will
13 be related to Mr. Robinson's email to the
14 members of council and the statement he made at
15 the top of page 2 of this exhibit.

16 A. Okay.

17 Q. So do you recall, Councilman Smith, on
18 September 20 of 2020, Councilman Robinson
19 emailing you and the other members of City
20 Council and stating that he, Councilman
21 Robinson, will be making a motion at tomorrow
22 night's meeting to temporarily suspend the UMCH
23 portion of the comprehensive plan pending
24 further update? Please know that I am going to

1 make this motion in this rather sudden manner
2 because of the urgency that we act while we can.

3 Do you see that?

4 MR. SILK: Objection. Form. It's
5 compound.

6 You can answer.

7 Q. You can answer.

8 A. Okay.

9 MR. SILK: If you're sure what you're
10 answering.

11 A. Yeah, I agree it's an interesting
12 question. I do not recall this and being sent
13 this. I've now seen it and I recall it. I
14 recall because it's in front of me. But I do
15 not recall having received it or reading it at
16 the time. I do not recall that.

17 Q. So you don't remember receiving it back
18 in September 20 of 2020. Do you have any reason
19 to doubt that you, in fact, received it?

20 A. I mean, my email is on here, so it
21 seemed like I received it, yes.

22 Q. And your email here is
23 doug.smith@worthington.org, correct?

24 A. Correct.

1 Q. So earlier you testified that your email
2 changed at a certain point in time.

3 A. Yeah.

4 Q. But for purposes of the record, that was
5 your City Council email address?

6 A. Yes.

7 Q. So do you recall doing anything upon
8 receipt of Councilman Robinson's email set forth
9 in Exhibit 34?

10 A. No, I don't remember doing anything.

11 Q. In fact, Councilman Robinson, on Monday,
12 September 21 of 2020, did seek to either impose
13 a moratorium or repeal the land use plan or
14 temporarily suspend the land use plan. Do you
15 recall that?

16 A. I do.

17 Q. And towards the end of the discussion
18 about Mr. Robinson's proposal, you asked if
19 staff could inform any potential applicant of
20 what Mr. Robinson's proposing. Do you recall
21 what you're referring to?

22 A. Yeah. I mean, the comment was in the
23 context of this motion that he had made. Does
24 that answer the question?

1 Q. Sure. Was there any -- in other words,
2 why did you think it -- or why did you ask or
3 want to ask staff that they inform any potential
4 applicant about Mr. Robinson's proposal?

5 A. I can't remember exactly the source, but
6 I remember hearing that that application was
7 going to be potentially coming forward on the
8 property, about the property, and just wanted to
9 see if staff -- you know, the spirit of that
10 comment from me, my thought process was wanted
11 to see if staff had known anything about that,
12 where that stands and inform the property owner
13 of such.

14 Q. Okay. So you wanted staff to inform the
15 property owner of Mr. Robinson's proposal before
16 it was acted upon?

17 A. I think, the spirit of the comment I
18 made was more just in general about the status,
19 I think, to see if they could learn anything
20 about the status, and part of that status being
21 what we had discussed previously in the council
22 meeting.

23 Q. Let me direct your attention, Councilman
24 Smith, to Exhibit 41.

1 A. It's blank.

2 Q. It's right here.

3 A. Old lawyer's trick, huh.

4 Q. I didn't have a three-hole punch.

5 I just handed you what was marked as
6 Exhibit 41, which are the minutes of that
7 September 21, 2021, council hearing. And I want
8 to direct your attention to the second-to-last
9 page of that exhibit.

10 A. I'm just going to breeze through the
11 process here.

12 Q. Take your time.

13 A. Oh, yeah. Sidebar. One of the worst
14 decisions I ever made about the trick or treat
15 policy.

16 You referred me to the second-to-last
17 page?

18 Q. Yeah, the second-to-last page.

19 A. Okay. Let me peruse that real quick.

20 Q. My question's really going to pertain to
21 the last paragraph above "other" on that page.

22 A. All right. I have reviewed it.

23 Q. Councilman Smith, earlier you had
24 mentioned about status and notifying -- and

1 asking staff to obtain the status from the
2 potential applicant. However, I think, at least
3 when I reviewed the minutes, it seemed to be a
4 little different than that, and so I just wanted
5 to make sure we're both on the same page.
6 Because when I look at the minutes, generally,
7 it says here that Mr. Lindsey explained that the
8 question is with any moratorium prompted, and
9 he's referring to Councilman Robinson's proposed
10 moratorium on development of the UMCH property;
11 is that fair?

12 A. I believe Mr. Lindsey was referring to
13 Mr. Robinson's proposed idea, yeah.

14 Q. But it pertained to the UMCH property?

15 A. To the entire comprehensive plan, I
16 believe. Isn't that what it is?

17 Q. Well, the 2014 comprehensive plan.

18 A. That's certainly one pathway. I'm not
19 sure I would have ruled out the entire
20 comprehensive plan. Referring to Mr. Lindsey
21 saying if you were to suspend any or all
22 comprehensive plans. I mean, I wouldn't rule it
23 out.

24 Q. Okay. Mr. Lindsey went on to say that

1 there's a legal process to accomplish in
2 consideration of what degree of transparency or
3 process that City Council wanted to go through
4 to get to a moratorium. Do you recall that?

5 A. He refers to that here, yes.

6 Q. And Councilmember Kowalczyk stated that
7 made her feel better and is more transparent.
8 Do you recall that?

9 A. So said the minutes, yes, I recall.

10 Q. And Mr. Greeson described how the risk
11 is that we get an application prior to then and
12 it would then fall under the existing
13 comprehensive plan. Do you recall that?

14 A. Correct, yes.

15 Q. And he's referring to an application to
16 the development of the UMCH property, fair?

17 A. I think in this context the conversation
18 is just in general, how much the process works,
19 how the -- you know, Mr. Lindsey likes to -- at
20 least my take on it, likes to talk in broad
21 strokes of the law and how as a municipality we
22 have processes and what the laws are according
23 to him.

24 Q. And then according to the minutes, you

1 asked if staff could inform any potential
2 applicant of that possibility?

3 A. Yes.

4 Q. And so my question is, what did you mean
5 by that? what were you directing staff to do or
6 asking staff to do there?

7 A. Again, like I stated earlier, I stand on
8 that statement. The spirit of that statement,
9 even though -- the spirit of that statement was
10 certainly to figure out what the status actually
11 is on any application that might or might not be
12 coming to the city, and specific to the UMCH
13 property.

14 Q. Okay. Do you have anything else to add?

15 A. I don't.

16 MR. INGRAM: I'll tell you what, we've
17 been going for some time. Do you want to take a
18 break?

19 THE WITNESS: Sure.

20 (Recess.)

21 BY MR. INGRAM:

22 Q. Councilman Smith, we are back from our
23 break, and just prior to our break we were
24 talking about your comments from the September

1 21, 2020, City Council meeting. Do you recall
2 that?

3 A. Yes.

4 Q. I want to direct your attention to what
5 was previously marked as Exhibit 36. And while
6 you review Exhibit 36, for purposes of the
7 record, that is an email chain sent from
8 Mr. Greeson to David Robinson and CC'ing other
9 members of City Council, regarding the UMCH
10 discussion with LC.

11 A. Okay. I reviewed it.

12 Q. So with respect to -- from
13 Mr. Robinson's perspective of City Council's
14 discussion, he framed it differently than you
15 just did. He framed it as a UMCH discussion.
16 Do you see that?

17 MR. SILK: Objection to your commentary.
18 Go ahead.

19 A. Do I see where he's asking a simple
20 question?

21 Q. Yes.

22 A. Yeah, I see that.

23 Q. Okay. And if you turn to Mr. Greeson's
24 response to Councilmember Robinson on page 1 of

1 Exhibit 36, Mr. Greeson says, we committed doing
2 so during the council discussion about the
3 matter on September 21st. For reference, at
4 about the two-hour, four-minute and 19-second
5 mark on the video, there is a specific part of
6 the conversation towards the end where we talked
7 about when the issue will be placed on the
8 agenda.

9 Do you see that?

10 A. I do see that.

11 Q. Mr. Greeson goes on to say,
12 Councilmember Smith asks staff to make the
13 potential applicant aware of the conversation.
14 while initially hesitant, I answered that we
15 would; saying, sure, because Councilmember
16 Smith's request was consistent with a good
17 government practice of trying to be transparent
18 and open, particularly as it relates to things
19 being publicly discussed by council and directly
20 affecting a party who has asked to meet with us.

21 A. I see that.

22 Q. Do you see that?

23 A. I do.

24 Q. Do you recall receiving this email?

1 A. I do not recall receiving this email,
2 no.

3 Q. But it was sent to you?

4 A. It was.

5 Q. Okay. And so at least from
6 Mr. Greeson's perspective, the conversation on
7 the -- during the September 21, 2020, meeting
8 concerned Lifestyle, correct?

9 A. From Mr. Greeson's perspective, you'd
10 have to ask him.

11 Q. Do you disagree with Mr. Greeson's
12 characterization of that meeting that's set
13 forth in Exhibit 36?

14 A. I would frame it as possibly Mr. Greeson
15 did not understand the spirit of my question to
16 staff if they could inform any potential
17 applicant of the possible conversation.

18 Q. Did you respond to anyone on this email
19 chain here on Exhibit 36 to correct
20 Mr. Greeson's characterization?

21 A. I did not.

22 Q. Why not?

23 A. I can't be sure I even read this.

24 Q. Do you typically ignore the city

1 manager's emails that are sent to you about
2 matters before the city?

3 A. I do not ignore emails that are sent
4 directly to me. When there are communications
5 to all councilmembers, I may -- may or may not
6 ignore them.

7 Q. You don't recall one way or the other
8 whether you would have read Exhibit 36?

9 MR. SILK: Objection. You asked him
10 that.

11 A. I don't recall.

12 --0--

13 (Deposition Exhibit 47 marked.)

14 --0--

15 BY MR. INGRAM:

16 A. I've reviewed this.

17 Q. Okay. For purposes of the record,
18 what's been marked as Exhibit 47 is an email
19 from you to President Michael, President Pro-Tem
20 Myers and the city manager CC'ing other members
21 of council and the city's law director, dated
22 October 13, 2020; is that correct?

23 A. That is correct, yes.

24 Q. Is this an email that you sent?

1 A. Yes.

2 Q. Okay. And at the time you sent this
3 email, you had not reviewed Lifestyle's
4 application, correct?

5 A. That's correct.

6 Q. Okay. Directing your attention to the
7 last sentence of your email, you wrote, I think
8 it is important to give the community, our
9 boards, and the applicant direction, or at least
10 reiteration of our thoughts.

11 Do you see that?

12 A. I see that.

13 Q. What direction did you provide to
14 Lifestyles with respect to their application?

15 A. In response to this, or ever?

16 Q. In connection with your email set forth
17 in Exhibit 47, what direction did you provide to
18 Lifestyles?

19 A. I guess I still don't understand the
20 question. Like, at this moment in time, or
21 leading up prior to this email?

22 Q. As follow-up to your October 13, 2020
23 email.

24 A. What direction did I give them?

1 Q. Yes.

2 A. None.

3 Q. what direction did you provide to any
4 city board in connection with Lifestyle's
5 application?

6 A. None.

7 Q. what direction did you provide to the
8 community in connection with Lifestyle's
9 application?

10 A. None.

11 Q. what thoughts did you provide to
12 Lifestyle in connection with its application?

13 MR. SILK: Objection. Asked and
14 answered.

15 Go ahead.

16 A. None.

17 Q. Earlier I asked about direction. Now
18 I'm asking about any general thoughts.

19 A. None.

20 Q. what thoughts did you provide to any
21 city board concerning Lifestyle's application?

22 A. I guess I'm still on the idea of as it
23 pertains to this email at this point in time,
24 subsequent communications were none from me.

1 Q. Okay. None being to either Lifestyle,
2 any city board or community; is that correct?

3 A. Correct.

4 Q. Okay.

5 ==0==

6 (Deposition Exhibit 48 marked.)

7 ==0==

8 BY MR. INGRAM:

9 Q. Councilman Smith, you've been provided
10 what was marked as Exhibit 48, which is an email
11 from you to members of City Council and other
12 Worthington officials, dated January 23rd, 2021.
13 Do you see that?

14 A. 5:01 a.m. Yes, I see that.

15 Q. So is this an email that you wrote?

16 A. It is.

17 Q. With the subject matter of UMCH property
18 transfer?

19 A. Correct.

20 Q. And at this time, you're aware of,
21 obviously, Lifestyle's application that was
22 pending before the city at that time?

23 A. At that time, yes.

24 Q. And you wrote to all of your City

1 Council members, on public record: This opaque
2 transaction reeks of highly unethical behavior.

3 Do you see that?

4 A. I see that, yes.

5 Q. What highly unethical behavior are you
6 accusing Lifestyle of?

7 A. I'm not accusing Lifestyles of any
8 unethical behavior.

9 Q. Okay. Then what are you referring to
10 here when you say this reeks of highly unethical
11 behavior?

12 A. I'm referring to a property transferred
13 to Worthington Campus, LLC.

14 Q. Okay. And what is unethical about a
15 property transfer?

16 A. That I'm still at that point, and even
17 still today, unclear about what is Worthington
18 Campus, LLC.

19 Q. Okay. In your mind, what is the
20 unethical behavior you're referring to here to
21 all members of council?

22 A. That according to the Secretary of
23 State's website, the articles of incorporation
24 for Worthington Campus, LLC appear to have been

1 filed by the law firm Ice Miller, in general,
2 and I know Ice Miller is a law firm in downtown
3 Columbus. In general, has nothing to do with
4 Lifestyles. I don't even know if they're
5 related to this property transfer. I still have
6 no idea. I think, in general, though, to have a
7 law firm file articles of incorporation on
8 behalf of an LLC is -- is, in my opinion, highly
9 unethical behavior.

10 Q. Any other reason that you're
11 referring -- strike that. Let me start over.

12 Anything else here do you believe was
13 unethical? Anything else?

14 A. No.

15 Q. Are you aware that Worthington Campus,
16 LLC was the applicant?

17 A. The applicant for what?

18 Q. Lifestyle's rezoning.

19 A. How could that be?

20 Q. Were you aware, or not?

21 A. No.

22 Q. And didn't City Council have a rule
23 against reply all emails to members of council?

24 A. I believe this was not a reply all, but

1 me actually sending a message to all of council.

2 Q. Okay.

3 A. And to answer your question, I don't
4 know that there's a rule against it.

5 Q. Is there a policy against reply alls to
6 all members of council?

7 A. Not that I'm aware. I believe council
8 has the option to, when they want something on
9 public record, knowing that it will be on public
10 record, to send it to all members of council.

11 Q. Let me direct your attention, Councilman
12 Smith, to what was marked as Exhibit 6.

13 A. Exhibit 6.

14 Q. You can see that Exhibit 6 is Ordinance
15 No. 04-2022, correct?

16 A. Yes.

17 Q. Go ahead and take your time to review
18 it.

19 A. Okay.

20 Q. You introduced Ordinance Number 4-2022
21 at the January 18, 2022, City Council hearing,
22 correct?

23 A. I did.

24 Q. Were you familiar with this proposed

1 ordinance before you introduced it?

2 A. The concept, yes.

3 Q. Who drafted this ordinance?

4 A. I don't know.

5 Q. At any time before you introduced the
6 ordinance, did you propose any revisions to its
7 substance?

8 A. No.

9 Q. When's the first time you reviewed
10 Exhibit 6?

11 A. When was the meeting?

12 Q. January 18th.

13 A. Then January 18th.

14 Q. Did you review any prior drafts of
15 Exhibit 6?

16 A. No. Unless it was provided -- I don't
17 know -- I didn't read word for word, so if this
18 was an amended draft, I can't confirm that
19 without reading it and having the actual package
20 in front of me from the day. But no, I didn't.

21 Q. Are you aware of any -- strike that.

22 How many versions of Ordinance 4-2022
23 are you aware existed?

24 A. This is the only version I'm aware of.

1 Q. Okay. It's not like there were any
2 exchange of drafts or anything like that?

3 A. No, not that I'm aware of.

4 Q. Okay. So the first time you were
5 provided with this proposed ordinance was the
6 day of City Council's hearing?

7 A. Correct.

8 Q. And who provided that to you?

9 A. I can't recall. I can't recall.

10 Q. Did you share this proposed ordinance
11 with anyone prior to the January 18 hearing?

12 A. No.

13 Q. You said you were familiar with the
14 concept behind Ordinance No. 4-2022 prior to the
15 hearing. Please elaborate on your familiarity
16 with this concept and what you're referring to.

17 A. The concept, as we've discussed earlier
18 today, was essentially a continuation of the
19 concept presented in September of 2020 at
20 council. So the concept's been floating around
21 for some time. So the words on the paper
22 manifest the concept, of course, but the concept
23 I was familiar with.

24 Q. What discussions did you have about this

1 concept you're referring to prior to the January
2 18 hearing?

3 A. Can you define discussion?

4 Q. Did you have -- did you talk about
5 imposing a moratorium against the rezoning or
6 development of the LC property prior to the
7 January 18, 2022, hearing?

8 A. I'm still not comfortable with the
9 question the way it's worded. I did not have a
10 conversation about this with anybody.

11 Q. Okay. Did you have any emails or text
12 messages about a moratorium on LC's property
13 prior to the January 18 hearing?

14 A. No.

15 Q. And as the member of council who
16 introduced Exhibit 6, I take it you reviewed
17 that ordinance or that proposed ordinance?

18 A. I did.

19 Q. In advance of introducing it?

20 A. Yes.

21 Q. And that ordinance only applies to the
22 UMCH site, correct?

23 A. That is correct.

24 Q. And it, therefore, only applies to LC,

1 the owner of the UMCH property, correct?

2 A. It applies to whoever the property owner
3 may be.

4 Q. Okay. What is your understanding of why
5 this moratorium was sought to be placed on
6 Lifestyle's property at the time?

7 A. Sorry, I was lost in the whole
8 Worthington Campus thing in my mind, so can you
9 repeat that?

10 MR. INGRAM: Can you read that back,
11 please.

12 (Record read as requested.)

13 A. Again, I -- is it Lifestyle's property?
14 Can I get clarity on that?

15 Q. All right. How about we just refer to
16 it as the property.

17 A. The property. I can agree with that.

18 So like I said, it's a continuation of a
19 conversation that was put on pause in September
20 of 2020. This manifested in words that concept,
21 that idea, to give us a little time so you can
22 take and think and engage with the appropriate
23 stakeholders.

24 Q. What is your understanding of why

1 Ordinance 4-2022 was proposed as an emergency?

2 A. My understanding, as one member of
3 council, was there was some urgency to making it
4 clear to the community and all the stakeholders
5 who would have an interest in this property that
6 were open for conversation.

7 Q. What do you mean by open for
8 conversation?

9 A. I think the intent of at least how I
10 read Ordinance 4-2022 is to really give the city
11 and the community and the -- whoever the
12 property owner might be the ability to engage
13 with each other in a robust and respectful way
14 to understand what the best use for the property
15 is.

16 Q. But it would prevent the property owner
17 from submitting an application to redevelop the
18 property, correct?

19 A. It would allow a community conversation
20 to happen, which would then guide any potential
21 applicant to the best use for the property based
22 on that feedback.

23 Q. This community conversation that you
24 referred to, what community conversation could

1 the property owner rely upon? What are you
2 referring to to guide its development of its
3 property?

4 A. A property owner who wants to submit a
5 rezoning application is free to engage with the
6 public, and I think, as I see it, encouraged to
7 engage with the public, resident groups,
8 neighbors, the public at large, other
9 stakeholders, businesses, city representatives,
10 experts in various fields to get inputs from
11 those stakeholders so that they can be well
12 informed about how they could best develop their
13 property.

14 Q. Okay. And Councilman Smith, how much
15 community conversations -- how much community
16 engagement must an applicant complete in order
17 to rezone their property in this city?

18 MR. SILK: Objection to foundation.

19 Go ahead.

20 A. There is no quantitative measurement of
21 engagements, other than the qualitative
22 measurement of getting feedback from the
23 community and its representatives at whatever
24 appropriate forum that might be throughout the

1 process.

2 Q. Okay.

3 A. And that goes for -- that goes for any
4 property throughout the city with any
5 development.

6 Q. And Councilman Smith, with respect to
7 LC, what would be the appropriate forums, in
8 your mind, that you just referenced?

9 MR. SILK: Same objection.

10 Go ahead.

11 A. It's up to any applicant to determine
12 what the appropriate forum is for them. You
13 know, there's a smorgasbord -- sorry if that's
14 hard to spell -- smorgasbord of options
15 available to any developer to reach out to the
16 public, community groups, residents, getting
17 letters of -- letters of acceptance,
18 essentially, of plans and stakeholders'
19 feedback. Folks I mentioned just a minute ago.

20 Q. To your knowledge, is there a provision
21 in the zoning code that requires an applicant to
22 engage in community conversations in connection
23 with applying to rezone their property?

24 MR. SILK: You mean if they want to

1 survive Issue 38?

2 A. I think -- I can't speak to the zoning
3 code. I can speak as an elected official,
4 understanding that there was an Issue 38 that
5 did make it very clear to any property owner
6 submitting application for rezoning that they
7 would be subject to the community feedback
8 structure in any case on any property so that it
9 is important to engage with the public prior to
10 and throughout that process.

11 Q. But that's not a requirement, is it?

12 A. That is a subjective question with a
13 subjective answer. I -- that's what I'll say.

14 Q. Is it a requirement, or not?

15 A. I don't know if it's a requirement.

16 MR. INGRAM: Counsel, I'd ask that you
17 refrain from testifying and stick with the
18 objections.

19 MR. SILK: Assuming you reciprocate,
20 happy to do it.

21 BY MR. INGRAM:

22 Q. The ordinance you proposed here in
23 Ordinance 4-2022, it makes a reference to Sixth
24 Circuit Court of Appeals decision. Do you

1 recall that?

2 A. I recall. Yes.

3 Q. Regarding tree ordinances?

4 A. Yes.

5 Q. What, if anything, did City Council pass
6 pertaining to any tree ordinance, subsequent to
7 January 18 of 2021 -- I'm sorry, 2022?

8 A. Other than what we have had as policy, I
9 don't think we passed anything.

10 Q. Other than consideration of Ordinance
11 No. 4-2022, did City Council consider any
12 revision to its policies concerning trees?

13 A. Subsequent to the January meeting?

14 Q. Correct.

15 A. I don't believe so.

16 Q. Has City Council completed a
17 comprehensive review of the current city
18 comprehensive plan since January 18 of 2022?

19 MR. SILK: Objection to form.

20 Go ahead.

21 A. Has City Council reviewed
22 comprehensively the comprehensive plan?

23 Q. Completed a comprehensive review of the
24 current comprehensive plan.

1 A. Can you be more specific with that
2 question?

3 Q. Sure. In the ordinance you introduced,
4 there's a reference to the fact that the city
5 had not conducted a comprehensive review of the
6 current comprehensive plan. And my question to
7 you is: Has City Council conducted a
8 comprehensive review of the city's current
9 comprehensive plan since January 18 of 2022?

10 A. I understand. Yeah. We have taken
11 steps to begin a -- what I would call a
12 comprehensive review broken into different
13 studies.

14 Q. Okay. And what steps are you referring
15 to that the City Council's completed?

16 A. Directing staff to undergo a variety of
17 different types of studies.

18 Q. And what studies are those?

19 A. The industrial corridor study for the
20 eastern part of the city, the industrial
21 corridor. The housing study, which will be a
22 big factor in the comprehensive plan. And
23 there's another one on the tip of my tongue. I
24 can't think of it. And of course, the visioning

1 process, which is going on.

2 Q. Any others?

3 A. That's all I can think of.

4 Q. Would the industrial corridor study
5 pertain to the Lifestyle/LC property?

6 A. I think all of these studies will inform
7 and impact the entire comprehensive plan,
8 including the UMCH site property.

9 Q. Is the LC's property in the industrial
10 city's corridor?

11 A. No, not a part of that study.

12 Q. Okay. You mentioned the visioning
13 process?

14 A. Correct.

15 Q. What is the visioning process?

16 A. So circa 2019, the City Council decided
17 to engage a consultant to help with a visioning
18 process, and the visioning process purpose was
19 to be -- to find aspirational statements for the
20 city which ultimately led to a visioning
21 committee of residents, driven by residents, who
22 did come up with a visioning plan, a visioning
23 statement plan, which was seven vision
24 statements. And that -- fast-forward a piece of

1 time, and council earlier this year decided
2 to -- each councilmember takes one visioning
3 statement of the seven -- since there are seven
4 of us -- and work with an implementation team to
5 figure out more specifically what those
6 aspirational vision statements could be turned
7 into tangible products or projects. And that's
8 where we stand today.

9 Q. So the visioning process started four
10 years ago, roughly?

11 A. Roughly, yeah.

12 Q. And what consultant was engaged by the
13 city?

14 A. Poggemeyer. That's P-O-G-G-E-M-E-Y-E-R.

15 Q. And there was seven aspirational vision
16 statements?

17 A. That's correct.

18 Q. Have any of the seven aspirational
19 vision statements been converted into any
20 tangible projects, as you, I believe, phrased
21 it?

22 A. I believe there's public outreach on
23 that happening in October and November, and we
24 discussed even this week at council that that

1 public feedback will then come back to council
2 likely November and we'll be deciding what
3 tangible projects to include for next year.

4 Q. Do any -- in your mind as a member of
5 council, do any of the seven aspirational vision
6 statements bear upon the development of LC's
7 property?

8 A. Bear on the development, can you
9 elaborate that?

10 Q. Sure. I'm trying to gauge whether the
11 visioning process in any of these aspirational
12 statements are at all relevant to LC's property
13 or not.

14 A. I might say personally that all of the
15 statements are relevant to all properties in
16 Worthington because they're aspirational and
17 kind of chiseling down into -- you know, there's
18 a line of demarcation of aspirational down to
19 tangible products and projects. So I don't know
20 how to answer that exactly. But yes, I would
21 say the aspirational statements all impact every
22 property in Worthington.

23 Q. Since 2019, has there been numerous
24 residential rezonings in the city, correct?

1 A. Residential rezoning since 2019?

2 Q. Yes.

3 A. I can think of one. There might be
4 more.

5 Q. Which one are you thinking of or
6 recalling?

7 A. The -- what's now called the Hartford or
8 the Stafford Village.

9 Q. And what's the Stafford Village, for the
10 record?

11 A. It is a property in Old Worthington
12 owned by the National Church Residences, plural,
13 and they wanted to demolish the existing
14 residential properties for senior living and
15 construct a -- kind of a different style of
16 residential property.

17 Q. And when did that occur? When did the
18 rezoning occur, I should say?

19 A. Council voted on that in January of
20 2020, I believe.

21 Q. You referenced a housing study earlier.
22 Has the housing study you referenced been
23 completed?

24 A. It's not completed.

1 Q. When was it started?

2 A. Sometime in the spring or late winter of
3 this year.

4 Q. of 2022?

5 A. '23. Yeah, I understand.

6 Q. So why did you vote in favor of imposing
7 this moratorium set forth in Exhibit 6 against
8 the -- considering any future development of
9 LC's property?

10 A. I might word that slightly differently.
11 I voted --

12 Q. Okay. Go ahead.

13 A. I voted to support Ordinance No. 4-2022
14 because I believe President Robinson's
15 introductory remarks about the ordinance itself
16 were accurate. They rang true to me in the
17 sense that, you know, we had just come off of a
18 vote on this property. And this particular
19 ordinance is a continuation of a conversation we
20 had prior to the application for that property
21 back in September of 2020, and it just seemed
22 like the appropriate thing to do to signal to
23 the community and to the stakeholders and the
24 property owner that we can have a conversation

1 about it.

2 Q. Anything else? Any other reasons?

3 A. No, I don't believe so.

4 Q. Now I'd like to direct your attention,
5 Councilman Smith, to Exhibit 7. Go ahead and
6 take a moment to refresh your recollection of
7 Exhibit 7, which was -- which is Resolution
8 4-2022.

9 A. Okay. Thank you.

10 Q. Councilman Smith, now that you've had an
11 opportunity to review Exhibit 7, do you recall
12 that Resolution Number 4-2022 substituted or
13 replaced the land use plan within the city's
14 comprehensive plan?

15 MR. SILK: Objection to form.

16 Go ahead.

17 A. Yeah, I don't think that's accurate, and
18 I don't see it that way. I see it as an
19 augmentation, a supplement, an addition even to
20 the land use plan.

21 Q. Councilman Smith, is the land use plan
22 still in effect?

23 MR. SILK: Same objection.

24 Go ahead.

1 A. I don't know.

2 Q. As a member of City Council who voted
3 for Resolution Number 4-2022, do you recall
4 voting for this?

5 A. I did. I did vote for this.

6 Q. Okay. What is your understanding of
7 whether or not -- after council adopted
8 Resolution Number 4-2022, what is your
9 understanding of whether the land use plan that
10 we reviewed in Exhibit 1 -- of whether it still
11 applied to the future development of LC's
12 property or not?

13 MR. SILK: Objection to form and legal
14 conclusion.

15 Go ahead.

16 A. Based on the information from January
17 18th of 2022 and the resolution language, it's
18 resolved that the attached amendment -- an
19 amendment to the comprehensive plan, including
20 the 2014 amendment -- including the 2014
21 amendment, be adopted.

22 Q. So does --

23 A. I believe it's an aggregate, an
24 accumulated thing.

1 Q. So Councilman Smith, it's your
2 understanding -- and I'm just trying to
3 understand what that is -- that pages 1 and 2
4 that are attached to the resolution set forth in
5 Exhibit 7 are in addition to the land use plan
6 in Exhibit 1; is that fair?

7 A. That's my understanding of the
8 resolution, they're including it, this
9 attachment that he just referenced, to the 2014
10 amendment.

11 Q. Okay. So for the landowner's purposes,
12 LC's purposes, or Worthington Campus' purposes,
13 both Exhibit 1 and Exhibit 7 serve as guides to
14 the future development of the UMCH property; is
15 that fair?

16 MR. SILK: Objection to foundation.

17 Go ahead and answer.

18 A. As of January 18th, 2022, I think it's
19 my understanding, as one member of council, that
20 the guide that is the 2014 land use plan,
21 quote/unquote, is added to and supplemented by
22 the Resolution 04-2022.

23 Q. So in your mind, do both documents still
24 apply, or not? That's what I'm trying to get

1 to.

2 MR. SILK: Objection. Asked and
3 answered.

4 Go ahead.

5 A. I believe a developer can interpret it
6 that way, if they so choose.

7 Q. My question is different, though. How
8 do you interpret it as a member of council who
9 voted for Resolution 4-2022?

10 MR. SILK: Objection. This is the last
11 time he's going to answer the question.

12 MR. INGRAM: He didn't answer it the
13 last time.

14 MR. SILK: He did.

15 A. I feel that I have sufficiently answered
16 it by reading the resolution section 1 verbatim.
17 That's how I interpret it. The wording is black
18 and white.

19 Q. When did you first receive a copy of
20 Resolution 4-2022?

21 A. On January 18th, 2022.

22 Q. So the day of the City Council meeting?

23 A. The day of the meeting.

24 Q. Do you recall what time of day?

1 A. Afternoon, I believe.

2 Q. Who, to your knowledge, received a copy
3 of Resolution 4-2022 in advance of the hearing?

4 A. I don't know. I don't know.

5 Q. Who provided you with your copy prior to
6 the hearing?

7 A. I want to say staff, but I don't know
8 for sure.

9 Q. If it wasn't staff, who would it have
10 been?

11 A. Resolutions typically come from staff,
12 or the president of council sets the agenda, so
13 could have been.

14 Q. The president of council sets the
15 agenda?

16 A. According to our charter, the city
17 manager, along with the president of council,
18 set the agenda, yes.

19 Q. Do you know who drafted this resolution?

20 A. No, I don't know who drafted it.

21 Q. Do you know when it was drafted?

22 A. I don't know.

23 Q. How was -- I know you said you couldn't
24 recall who provided you with an advance copy of

1 this resolution. How was it provided to you?

2 A. Via the city email.

3 Q. Why was LC not provided a copy of
4 Resolution 4-2022 in advance of the January 18
5 hearing?

6 A. I don't know.

7 Q. Did you talk to anyone prior to the
8 January 18, 2022, hearing about Resolution
9 Number 4-2022?

10 A. I did, yeah.

11 Q. Okay. Tell me about that. Who did you
12 talk to?

13 A. President Robinson.

14 Q. Anyone else?

15 A. No.

16 Q. Okay. And when did you talk to
17 President Robinson about it?

18 A. Within a day or two prior to the
19 meeting.

20 Q. So a Saturday or Sunday?

21 A. Meetings are on Mondays, and that
22 particular meeting was -- was that a Tuesday?
23 Was that MLK day? So it could have been that
24 Monday.

1 Q. So it was Tuesday, January 18?

2 A. Tuesday, January 18.

3 Q. Your memory is correct, it was after MLK
4 day.

5 A. Likely.

6 Q. And so when you say a day or two before,
7 it would have been over the weekend, then?

8 A. More likely, just because of my MO,
9 Monday.

10 Q. But you don't recall one way or the
11 other?

12 A. I can't say for sure.

13 Q. And this was via a phone call?

14 A. A phone call.

15 Q. And was this in the same conversation
16 that the ordinance in Exhibit 6 was discussed?

17 A. I never admitted we discussed ordinance
18 6.

19 Q. Sorry. All right. So you talked about
20 Resolution 4-2022 in advance of the hearing, but
21 you didn't talk about the ordinance that you
22 introduced prior to the hearing?

23 A. We didn't talk about them by name at
24 all. I think, more accurately, President

1 Robinson had told me that he had an idea that he
2 may or may not come up with at the January 18th
3 meeting and just wanted to give me a heads-up.
4 wasn't soliciting feedback or insights. Didn't
5 ask any questions of me. It was more of a
6 courtesy call, I think.

7 Q. And this would have been a conversation
8 about the concept of the moratorium or amendment
9 to the comprehensive plan?

10 A. Both. Both concepts of the moratorium
11 and the -- and the resolution concept. Again, I
12 don't -- I don't distinguish that as a
13 conversation. I did no talking other than maybe
14 hello, nice weather. which, by the way, it
15 wasn't nice weather probably, because it was
16 January. So it was more of an informative thing
17 as president of council him contacting me to let
18 me know.

19 Q. Okay. And once you and President
20 Robinson discussed the concept of a moratorium
21 pertaining to the Lifestyle's property or LC's
22 property or the concept of amending the land use
23 plan that applied to LC's property, did you
24 share that concept or that discussion with

1 anyone?

2 A. Again, I wouldn't call President
3 Robinson's phone call with me a conversation or
4 a discussion. It was a courtesy heads-up on
5 what he intended to maybe or maybe not do on the
6 January 18th meeting. And no, I didn't -- I
7 didn't talk to anybody about it.

8 Q. Why didn't you call LC?

9 A. I can't think of a reason why I would.
10 It's not in my MO to reach out to property
11 owners.

12 Q. Did you contact the city manager or any
13 city staff and direct them to reach out to LC
14 based on what President Robinson told you?

15 A. It is not my personal MO to -- to do
16 that, no.

17 Q. Did President Robinson tell you not to
18 share the contents of your discussion or these
19 concepts with anyone?

20 A. No, he didn't tell me that.

21 Q. In your experience on City Council,
22 Councilman Smith, has City Council ever amended
23 the city's comprehensive plan through a
24 resolution that was not on City Council's agenda

1 and never publicly disclosed before City
2 Council's meeting before?

3 MR. SILK: Objection to form.

4 Go ahead.

5 A. So to be completely accurate, this
6 was -- this resolution you're referring to,
7 Resolution 04-2022, was on the agenda in the
8 broader sense, and it was publicly -- the
9 wording you used, it fits with that form,
10 because it was sent out via the city email. So
11 it was publicly available.

12 Q. Let's go to Exhibit 10, Councilman
13 Smith. Exhibit 10 is the City Council agenda
14 for the Tuesday, January 18, 2022, meeting.
15 Please review Exhibit 10, and let me know when
16 you're done.

17 A. Okay. Thank you.

18 Q. Now that you've had an opportunity to
19 review the agenda for that hearing, please show
20 me where Resolution Number 4-2022 is listed.

21 MR. SILK: Objection. Misstates his
22 testimony.

23 Go ahead and answer.

24 A. Any -- at any time, being that council

1 follows by charter Robert's Rules of Order, any
2 councilmember is allowed to make any motion,
3 resolution, ordinance introduced at any meeting
4 at any time. It's a simple fact that it's a
5 public meeting makes it public. During the
6 reports of councilmembers and other is the
7 appropriate time for resolutions to be made.

8 Q. Okay. So where in this agenda is there
9 any reference that would put anyone on notice
10 that the substance of Resolution 4-2022 would be
11 considered by City Council that night?

12 A. We publish our livestream videos and the
13 announcements as required by the Ohio Revised
14 Code to the public in advance of every meeting,
15 and the public can easily watch at any point in
16 time, and so that's the notification. Public
17 notice.

18 Q. My question was pertaining to this
19 agenda.

20 A. I understand.

21 Q. And you're now referring to some other
22 public announcement other than the agenda?

23 A. I'm referring to this agenda being like
24 every other agenda, available prior to the

1 meeting and announced as a public meeting where
2 council follows the charter and the Robert's
3 Rules of Order to, you know, propose motions and
4 amendments and resolutions and anything else
5 that any particular one councilmember wants to
6 propose and get a second and have a policy
7 discussion and vote.

8 Q. Okay. So with respect to council's
9 consideration of Resolution 4-2022, the advanced
10 public notice of council's consideration of that
11 measure is based on the word "other" in the
12 agenda; is that your testimony?

13 MR. SILK: Objection.

14 Go ahead.

15 A. It's based on the fact that every public
16 meeting that we have is publicly notified
17 through the standards set forth by the Ohio
18 Revised Code, and council has the allowance and
19 the authority to have considerations and propose
20 new language and amendments and motions and
21 resolutions like we did.

22 Q. But there is no explicit reference in
23 this meeting agenda to Resolution Number 4-2022,
24 is there, Councilman Smith?

1 MR. SILK: Objection. Asked and
2 answered.

3 Go ahead. Try again.

4 A. Sorry. I was -- there is no explicit --
5 can you repeat that?

6 (Record read as requested.)

7 A. Members of the public and stakeholders
8 and anybody in the community at large is welcome
9 to pull a public records request of any email
10 communication of anything relating to an agenda
11 item or nonagenda item at any point according to
12 the Ohio Revised Code.

13 Q. Anything else in response to that
14 question, Councilman Smith?

15 A. No.

16 Q. Earlier you mentioned -- you made a
17 reference to a city email that was sent out that
18 would make Resolution No. 4-2022 public?

19 A. Correct.

20 Q. Okay. Can you elaborate on what you're
21 referring to there?

22 A. Any correspondence and communication not
23 protected by attorney-client privilege is public
24 record, according to Ohio Revised Code Sunshine

1 Laws. And so any communication sent by --
2 whether it be staff or David Robinson as
3 president to council would be -- would be public
4 record, and so any member of the public at any
5 point for any reason can request those records
6 and they can be aware of those communications.

7 Q. So to your knowledge, was any version or
8 copy of Resolution No. 4-2022 made available to
9 anyone in the public prior to January 18?

10 A. By virtue of being sent on the city
11 email to city councilmembers, it is public.

12 Q. My question is a little bit different.
13 was, to your knowledge, any version of this
14 resolution provided to anyone of the public, to
15 anyone who is not a member of council, or not?

16 MR. SILK: Objection. Asked and
17 answered.

18 A. I can't speak to that specifically.

19 Q. So you don't know?

20 A. I don't know.

21 Q. Okay. Councilman Smith, the amendment
22 to the land use plan set forth in pages 1 and 2
23 of Exhibit 7, that amendment is to serve as a
24 guide for the future use and development of LC's

1 property, correct?

2 MR. SILK: Objection. Form.

3 Go ahead.

4 A. I wouldn't necessarily word it that way.
5 I would say it is an accumulation of information
6 that can be used -- can be used as a guide as
7 one of the pieces of information or, you know,
8 other pieces of information that a developer
9 might use to propose an application.

10 Q. So Councilman Smith, in Section 1 of the
11 resolution that -- it says, the attached
12 amendment be adopted to serve as a guide for
13 future use in development of the site. Do you
14 see that?

15 A. The attached amendment to the -- be
16 adopted to serve as a guide for future use in
17 development of the site. Yeah.

18 Q. So do you agree with that?

19 A. I agree with what's written here, yes.

20 Q. Okay. So looking at the first guiding
21 principle in the amendment, it says, it is
22 important that the development of the property
23 be considered and executed holistically as an
24 integrated whole. Do you see that?

1 A. I do.

2 Q. In your capacity as a member of City
3 Council, under this first guiding principle, can
4 Lifestyles, or LC, move forward and develop only
5 a portion of its property?

6 MR. SILK: Objection. Form.

7 Go ahead.

8 Q. You're giving a confused expression, so
9 let me just give you a concrete or tangible
10 example. Can LC move forward with developing or
11 rezoning only enough of their property for a
12 24,000 square foot commercial development and
13 nothing else?

14 MR. SILK: Objection. Form.

15 Go ahead.

16 A. I'm going to ask to have that repeated
17 in a second, but let me read this first.

18 will you repeat that, please?

19 (Record read as requested.)

20 A. That would be highly inaccurate. I
21 think this first guiding principle paints a
22 broad stroke of guidance that the property be
23 considered and executed holistically as an
24 integrated whole. LC is welcome to submit

1 application at any point with whatever proposal
2 they see necessary.

3 Q. Okay. And as a member of council who
4 voted to approve this guiding principle, how
5 would you apply it to an application that only
6 pertains to 24,000 square feet of the site?

7 MR. SILK: Objection.

8 You haven't established any foundation.

9 Go ahead.

10 A. Yeah, I'm not -- I'm not sure I
11 understand where 24,000 -- I mean, is this a
12 hypothetical --

13 Q. Yeah. I'm giving you a tangible --
14 remember, you were confused with my general
15 question, so I'm giving you a tangible example,
16 and I'm trying to ascertain how you would apply
17 this first guiding principle.

18 A. Specifically to a 24,000 square foot
19 commercial development and that's it?

20 Q. Correct.

21 MR. SILK: Same objection.

22 Go ahead.

23 A. I mean, is that something that an
24 applicant would do on this property? That's a

1 rough hypothetical. I can't wrap my head around
2 that.

3 Q. Okay. So if LC tomorrow filed an
4 application to rezone a small portion of this
5 site, solely and only for a 24,000 square foot
6 development, it wouldn't -- it wouldn't include
7 the entirety of the site. Do you see that?

8 A. Oh, I see what you're saying. Okay.
9 That was not clear to me a minute ago.

10 In a hypothetical situation, when any
11 property owner submits an application to the
12 city, it goes through the appropriate process.
13 By that point of the application submission, an
14 applicant should have reviewed guiding
15 principles, done the appropriate community
16 outreach, all those things that any property
17 owner would do with any application and then go
18 through the process, and then be prepared to
19 defend its position of the application
20 submission, based on how they interpreted the
21 guidelines.

22 Q. And my question is, how do you interpret
23 this first guiding principle with respect to an
24 application that does not include the entirety

1 of the -- of LC's property and only involves a
2 small portion of it?

3 MR. SILK: Same objection.

4 Go ahead.

5 A. If this comes to council, any
6 hypothetical -- any application, reviewing words
7 on a guiding document, I, as one member of
8 council, referring back to my original kind of
9 thought process and decision-making process and
10 looking at not only this and these words on the
11 paper, but how the applicant is defending those
12 words on the paper based on their application
13 submission, community feedback, communications
14 from residents, staff, expertise and notes and
15 the planning commission's minutes as well and
16 what conversations were had there. So that's
17 how I am approaching this as one ingredient of a
18 resolution.

19 Q. Okay. How do you interpret -- what is
20 your understanding of this first guiding
21 principle, then?

22 MR. SILK: Objection. Asked and
23 answered.

24 Go ahead.

1 A. I feel that that is not my role as a
2 councilmember to interpret this in a vacuum.
3 That I interpret it based on an application
4 that's in front of me as a policy question in
5 front of council. That's my answer.

6 Q. Okay. How would you direct an applicant
7 to interpret this first guiding principle, then?

8 A. I would not be directing an applicant in
9 any way. I would defer to staff.

10 Q. Let's take a look at the general
11 components on the second page of the amendment
12 in Exhibit 7. Do you see the reference to a
13 large contiguous green space?

14 A. First paragraph, yes.

15 Q. That's undefined, correct?

16 A. That is undefined, yes.

17 Q. What constitutes green space?

18 A. I personally believe green space would
19 be -- back to part of our previous conversation
20 about, in my mind, programmable space that can
21 host activities. Green itself being simply
22 grass or park space or, you know, they're more
23 nature-focused oriented kind of spaces as well
24 that can be considered green space. There's a

1 variety of types of green spaces, but I refer
2 back to the original conversation we had about
3 that.

4 Q. Okay. So with respect to general
5 component one, how large of a large
6 continuous -- contiguous green space is required
7 for LC's property?

8 MR. SILK: Objection to form.

9 Go ahead.

10 A. There is no requirement specifically. I
11 see applications and processes and development
12 proposals as a developer or landowner whoever
13 wants to submit an application has the
14 opportunity to interpret a variety of sources
15 and try to explain and justify their position
16 throughout the process. And if they do that,
17 and it comes to council, council can decide to
18 approve or deny, and that's the process.

19 Q. Okay. Let me restate my question.

20 A. Okay.

21 Q. I want to -- I'm asking something a
22 little different. What's the minimum number of
23 acres that satisfies this large contiguous green
24 space component?

1 A. The response is the same. I don't think
2 there is a specific minimum. It's not spelled
3 out here, certainly, in the wording. But as a
4 guide, again, you know, a developer is welcome
5 to submit an application and justify and argue
6 and fight for their position.

7 Q. So is there any standard that an
8 applicant should look to to have context in what
9 constitutes a large contiguous green space?

10 A. I defer to staff on those standards as a
11 professional expertise and where they might find
12 sources for that kind of standard.

13 Q. So the process is going to require,
14 entail back and forth between staff and the
15 applicant; is that fair?

16 A. I wouldn't say that specifically. I'd
17 say there's an opportunity to propose an
18 application and go through the process, which
19 I'll defer to the planning commission and staff
20 on what those initial steps are, they can follow
21 that process.

22 Q. Okay. Sticking with that first general
23 component, do you see where it says that the
24 large contiguous green space is to be central to

1 the property?

2 A. I see central to the property, yes.

3 Q. Central to the property is likewise
4 undefined, correct?

5 A. Correct, yeah.

6 Q. So where specifically on LC's property
7 must this large contiguous green space be
8 located?

9 A. Well, I'm not a developer, I'm not the
10 property owner. I can -- if I were, I could
11 interpret central to the property as a
12 geo-spatial context or -- or more less literal
13 and more of a central as in significant. So it
14 just depends how they want to interpret that and
15 how they want to defend their position.

16 Q. Councilman Smith, I'm asking you these
17 questions based on your support, your vote for
18 the adoption of this very language. But I'll
19 move on.

20 The next part of this first component,
21 do you see where it says, inclusive of the
22 Tucker Creek acreage?

23 A. Yes.

24 Q. Specifically where on LC's property --

1 where is the Tucker Creek acreage, as that is
2 specified here?

3 A. I believe that's pretty well documented
4 that the Tucker Creek acreage is a
5 non-developable piece of land based on the creek
6 that -- the Tucker Creek that runs through
7 there. So I'm fairly certain that's well
8 documented.

9 Q. Do you have any understanding or do you
10 know how many acres constitute the Tucker Creek
11 acreage that is referenced here?

12 A. If memory serves, it's somewhere in the
13 7 acres ballpark. The length of the creek.

14 Q. So looking at the first general
15 component, it says a large contiguous green
16 space central to the property and inclusive of
17 the Tucker Creek acreage. Do you see that?

18 A. Yeah, I see that.

19 Q. So is it fair to say that this undefined
20 large contiguous green space must span both the
21 Tucker Creek acreage as well as the central
22 portion of the property?

23 MR. SILK: Objection. Form.

24 Go ahead.

1 Q. Or not?

2 A. You mean -- you mean geo-spacially?

3 Q. Yes.

4 A. Span?

5 Q. Yes.

6 A. Like literally -- boy, I wish I had that
7 map. Like literally taking over from Tucker
8 Creek frontage to the physical center of the
9 site?

10 Q. Yeah.

11 A. I forget your wording, but I don't agree
12 with that.

13 Q. Okay. As a member of council and as one
14 who voted to adopt this language, how do you
15 interpret this first general component, then?

16 A. Personally, I would say central means
17 significant as opposed to geo-spacial. So a
18 significant -- significant to the property.
19 Again, any developer's welcome to interpret that
20 and defend their position any way they see fit.
21 But me, as an individual councilperson, I see it
22 as significant.

23 Q. And just so that you and I are on the
24 same page, this first general component you're

1 saying significant. Are you also making
2 reference to our prior conversation that it
3 include the programmable park amenity and things
4 of that nature?

5 A. Yeah, in my mind, significant would
6 allow for that programmable kind of activity.
7 Uh-huh.

8 Q. And with respect to this first general
9 component, do you have any specific park
10 amenities in mind, or not?

11 A. I don't. There's a lot of ideas out
12 there about, you know, from a park and recs kind
13 of perspective what you can do in a space from,
14 you know, 1 acre to 20 acres, and I'm not saying
15 that that's specific to this site, but the
16 concepts are out there, and I think it would be
17 interesting to explore all those concepts.

18 Q. Okay. When you say the concepts are out
19 there, are you referring to anything specific?

20 A. I'm talking about, you know, going to
21 the websites at like Ohio Parks and Rec
22 Association and things like that. They're
23 always talking about kind of the newest parks
24 programming and what's hip and trendy and what's

1 going to stand the test of time, new playground
2 equipment, stuff like that. So I'm not talking
3 about anything specific. I'm talking about just
4 generally capturing ideas and getting feedback
5 on those ideas.

6 Q. Okay. With respect to the second
7 general component, do you see the reference to
8 select service-oriented retail?

9 A. I do, yeah, I see that.

10 Q. What constitutes select service-oriented
11 retail?

12 A. Again, that's wording that's meant for,
13 you know, anybody who's developing to interpret
14 that the way they'd like and engage the
15 community to determine what the parameters might
16 be for a select service-oriented retail and then
17 defend that position during an application
18 process.

19 Q. As a member of council who voted to
20 adopt this language, how do you interpret select
21 service-oriented retail to include or exclude,
22 frankly?

23 A. Yeah, I would -- I would say the wording
24 here is interesting because, again, like central

1 could be -- on the first part central could be
2 physically central or significant central.
3 select could be, you know, seen as select
4 service-oriented, like we're selecting specific
5 types of services, or select as any number of a
6 selection which could be literally anything that
7 is retail. So I tend to widen the net a little
8 bit, and personally, as one member of council, I
9 think that could mean any service-oriented
10 retail.

11 Q. Is there any specific source or resource
12 that LC could go to to make a determination as
13 to what constitutes select service-oriented
14 retail?

15 A. I think those who use retail, and even
16 the inverse of that, the community members
17 themselves who would support retail here
18 locally, what kinds of service-oriented retail
19 the members of community would like. I think
20 that's probably not only a smart market-driven
21 approach, but also you'd get buy-in from the
22 community itself.

23 Q. And then with respect to commercial
24 development aimed at revenue generation for the

1 city, what does that general component mean to
2 you, Councilman Smith?

3 A. Well, it's no secret that the city
4 revenue comes a lot from -- mostly, 70 percent,
5 income tax revenue, taxes. So looking at those
6 considerations where, you know, it's not a --
7 not fully a financial burden for the city,
8 whatever the development may be, on any
9 property, not just this property. So if it's
10 commercial development, we would hopefully have
11 some sort of income tax revenue for the city
12 generated from that.

13 Q. What types of commercial development are
14 excluded from this general component? In other
15 words, can you think of any commercial
16 development that would not produce revenue for
17 the city through income taxes?

18 A. The question is, can I think of any
19 commercial developments that would not produce
20 income tax revenue?

21 Q. Correct.

22 A. There are commercial developments who to
23 develop would require a -- both an abatement, an
24 adventure grant essentially nullifying all the

1 income taxes for a period of time. That has
2 happened before. I can't remember specifics,
3 but I know that has happened. And I know city
4 staff doesn't like to do that. So we would
5 probably, as a city, in general, be more
6 interested in commercial developments that would
7 be interested in not taking advantage of any tax
8 rebates or offsetting any income tax to the
9 city.

10 Q. Looking at the third general component,
11 do you see the reference to creatively executed
12 residential housing?

13 A. I do. Yeah.

14 Q. Who gets to decide what residential
15 housing qualifies as creatively executed?

16 A. The applicant themselves can define what
17 creatively executed is, as long as they can
18 defend their position appropriately through the
19 process. And the best way to start that is with
20 reaching out to the community members.

21 Q. Okay. With respect to defending their
22 interpretation of the creative execution,
23 whom -- who's the adjudicator, who makes the
24 decision as to whether or not it's creatively

1 executed?

2 A. I mean, through the application process
3 itself, those -- that -- I wouldn't use the word
4 adjudication. I would say those decisions are
5 made based on a variety of sources, including
6 community feedback and whatever best practices
7 the experts at the staff level and the planning
8 commission level have in their background, as
9 well as the applicant themselves and why they
10 feel they propose this is the best use.

11 Q. What standards exist for the
12 applicant -- strike that. Let me start over.

13 What standards exist to guide any
14 decision-maker here at the city on what
15 constitutes creatively executed residential
16 housing here in this general component?

17 A. I can't speak for other members of
18 council or decision-makers in the city. Myself
19 only, I can say, you know, I'm leaning on
20 staff's notes and recommendations, I'm leaning
21 on the Municipal Planning Commission's process,
22 I'm leaning on the residents and communications,
23 I'm leaning on just general, you know, articles
24 that exist out in the world, TED Talks, you

1 know, of creative concepts, innovative ideas on
2 both housing and other forms of development. So
3 there are resources out there. Again, it's up
4 to the developer, in my mind, to -- to find some
5 information that best justifies their position
6 and defend it.

7 Q. So as a member of City Council who
8 adopted this phrasing, can you identify any
9 actual standard that the city will impose to
10 define what creatively -- creatively executed
11 residential housing constitutes?

12 MR. SILK: Objection to form and asked
13 and answered.

14 Go ahead.

15 A. I would say that that question is
16 relevant to this document because it speaks to
17 standards and policies, you know, in an
18 aggregate kind of form. This document is meant
19 as a guide. We've talked on council many times
20 about what this document, the comprehensive
21 plan, in general means. And it is, it's a
22 guide. It's meant to be a guiding document, not
23 asserting any one thing over another
24 specifically.

1 Q. All right. Well, looking across the
2 street at LC's property, are single family homes
3 considered to be -- or fall within the
4 creatively executed residential housing
5 component?

6 A. You're asking me as an individual
7 councilmember if I think that single family
8 homes would be creative? That's the question?

9 Q. Yeah. Under this component.

10 A. I think it can be, if they can justify
11 how it's creative.

12 Q. How many single family homes?

13 A. I don't set limits, minimum or maximum.

14 Q. Okay. How about apartments?

15 A. I believe apartments can be creatively
16 executed as well.

17 Q. Okay. And patio homes?

18 A. I believe patio homes can be creatively
19 executed.

20 Q. How about multifamily homes?

21 A. I believe multifamily homes can be
22 creatively executed.

23 Q. Okay. So for each of these -- each of
24 these types of housing stock, how can -- how are

1 they creatively executed? In your mind, how can
2 they be for this site?

3 MR. SILK: Objection.

4 Go ahead.

5 A. Yeah, I think, you know, you're cutting
6 the conversation short if you're only focusing
7 on number one of residential; whereas, it says
8 right in there in the statement to signal to the
9 reader that this -- this point is not over. Go
10 to number 2 and you'll see that no matter what
11 the residential housing is, what form it is, as
12 long as it's harmonious with overall mass and
13 scale, form, basically the balance of the
14 proposal itself and where residential fits in,
15 that's the answer. I mean, that's it right
16 there.

17 Q. So then what density of residential
18 housing is harmonious as it applies to this
19 site; so in other words, how many apartments are
20 harmonious to the surrounding neighborhoods?

21 A. You know, I don't place a number on it,
22 and I don't think that's the intent of this
23 particular wording. It is meant to be a guide
24 where a reader can read this and say -- think

1 critically about what decisions they need to
2 make in a proposal to -- to make it harmonious.
3 So it would be disingenuous to say what density
4 of apartments, what density of single family,
5 what density of patio homes, because none of
6 those can be looked at in a vacuum, unless
7 you're looking at it in a vacuum, which I don't
8 think you're doing here, so they have to look at
9 it, again, holistically to make sure it is a
10 harmonious development. I think there's a way
11 to do that. And if they can creatively execute
12 it, hey, I don't see an issue with that.

13 Q. So based on your knowledge and
14 experience of this site, this property, and
15 everything that's happened, how many apartments
16 are appropriate for this site?

17 A. How many did they propose in December of
18 '21 that came to council?

19 Q. 420.

20 A. Less than 420.

21 Q. Okay. How many less?

22 A. I don't want to put a number on it.

23 Q. Why not?

24 A. I think that would skew potentially the

1 application process. If I were to speak here
2 and somebody -- an applicant/property owner were
3 to read that, then it wouldn't be -- it wouldn't
4 be fair to the process.

5 Q. So when you voted upon a proposal that
6 contained 420 apartments on the site, did you
7 have any set number of apartments in mind that
8 would be appropriate for that site?

9 A. Well, I mean, the apartments were in
10 addition to all the other physical developments,
11 so the proposal itself, some of the mind-set
12 that I have when voting against the proposal in
13 December of '21, it very much is consistent with
14 this concept. Again, I didn't have this
15 concept -- the wording specifically at the time,
16 but the concept has been there for a long time.
17 How does the development in total impact the
18 city? What is the harmony with the project and
19 the neighborhoods and the community at large?
20 So there is no specific number minimum or
21 maximum necessarily.

22 Q. Why did you vote for Resolution No.
23 4-2022?

24 A. I truly believe it provides some

1 additional guidance to property owners,
2 stakeholders, the community about what -- it's
3 kind of a -- I won't say aspirational, but it
4 kind of is an aspirational kind of text, right?
5 We're not setting limitations or specific
6 numbers on things. We're allowing the developer
7 to propose an application and defend its
8 position. It's a conversation that had been
9 going on since 2015, the concept of Resolution
10 No. 4-2022. And so this was the fruition of the
11 past -- the previous eight years.

12 Q. So would a PUD be appropriate for this
13 site, PUD being a planned unit development?

14 A. A PUD could be appropriate.

15 Q. And City Council's not passed any new
16 guidelines for the development of LC's property
17 since Resolution 4-2022, correct?

18 A. That is correct.

19 Q. Very early on this afternoon you
20 referenced the phrase or you used the phrase
21 responsible development.

22 A. (Nods head.)

23 Q. What, in your mind, with respect to
24 Lifestyle's property, does responsible

1 development mean?

2 A. I think, you know, speaking as one
3 member of council kind of philosophically,
4 responsible is -- just as I have a
5 responsibility as an elected official to engage
6 with the public, really understand what the
7 concerns are, what the issues are, what the
8 topics are that mattered to people, and then try
9 to take those inputs and create an output that
10 is responsible based on the information that I
11 received.

12 So just like me, as an elected official,
13 taking those inputs and responsibly creating
14 policy or voting or whatever the action is, the
15 activity that I would expect of any -- that I
16 would hope for any developer on any property
17 throughout the city is to engage with residents
18 and understand what the desires and the needs
19 and the wants and the -- you know, what might be
20 some issues that can be worked out ahead of time
21 and take those inputs and create an output that
22 is responsible.

23 Q. Okay. You also were familiar with
24 WARD's political action committee. Do you

1 recall that?

2 A. I recall that.

3 Q. Did WARD's political action committee
4 contribute to your re-election campaign?

5 A. No.

6 Q. You kind of shook your head there.

7 A. I don't believe so. I don't remember
8 that.

9 Q. Has WARD's political action committee
10 sent any communications, to your knowledge,
11 referring to your re-election?

12 A. For this year?

13 Q. For this year, yes.

14 A. For this year's re-election? They just
15 came out with a -- I don't know -- postcard,
16 maybe something, door hanger, yes.

17 Q. Okay. Is WARD, based on that door
18 hanger, promoting your re-election?

19 A. In a way, they are. They're promoting
20 four people's candidacies and people can only
21 vote for three seats. So you tell me.

22 Q. Which four candidates is WARD
23 supporting?

24 A. In addition to myself, Pete Bucher, Mike

1 Duffey, and Felicity Beck, and myself.

2 Q. I'm a little dense. Sorry. So you --

3 A. Pete Bucher, Mike Duffey, Felicity Beck.

4 Q. Thank you.

5 Do you have any understanding of why
6 WARD is supporting you for re-election?

7 A. I'm a great listener to all residents
8 and no different with the residents of WARD.
9 They understood that I am a thoughtful leader
10 and have been since day one and have been there
11 to listen. Again, with the inputs and the
12 outputs and making decisions that are based on
13 those inputs from all residents, including WARD
14 residents. So I believe that's my
15 interpretation of why they're supporting my
16 candidacy.

17 Q. Do you know whether their support in any
18 way relates to the positions you've taken with
19 respect to Lifestyle's property?

20 A. I can't say for sure.

21 Q. You have a blog on the internet that is
22 posted at www.dougsmithohio.com, correct?

23 A. That's correct.

24 Q. Who writes those blog posts?

1 A. I write those blog posts.

2 Q. Does anyone review them before they're
3 published?

4 A. No, I don't think so.

5 Q. And you have written about the LC
6 property on your blog, correct?

7 A. I have.

8 Q. And you've written about this lawsuit on
9 your blog; is that correct?

10 A. Within the parameters of public record,
11 yes.

12 Q. What do you mean, parameters of public
13 record?

14 A. Why don't you go on with your
15 questioning and I'll maybe shine some light on
16 that.

17 Q. I'm just confused at what you're talking
18 about.

19 A. The things that I say in council or that
20 other people have said during meetings, on the
21 public record, that's what I try to stick to.

22 Q. Gotcha.

23 --0--

24 (Deposition Exhibit 49 marked.)

1 --0--

2 BY MR. INGRAM:

3 Q. Mr. Smith, I've handed you what's been
4 marked as Exhibit 49, which is a printout from
5 your blog with a title: "I'm running for
6 re-election," dated June 30. Do you see that?

7 A. Yes.

8 Q. And is Exhibit 49 a copy of a blog entry
9 on your blog that you wrote?

10 A. It is, yes.

11 Q. And that was June 30 of 2023; is that
12 correct?

13 A. That's what appears here. That sounds
14 right.

15 Q. Now, in your blog entry, Mr. Smith, you
16 use the term high density apartment. Do you see
17 that?

18 A. I do.

19 Q. What constitutes high density
20 apartments, in your mind?

21 A. In general, high density apartments, in
22 my mind, are any density that's greater than the
23 density that's allowed by city code currently on
24 any property throughout the city.

1 Q. And what is that density in the City of
2 Worthington?

3 A. It depends on the zone, on the code
4 zone, whether it's a residential R-10, R-6. So
5 it depends.

6 Q. Okay. What's that density in a planned
7 unit development zone?

8 A. The planned unit development itself
9 determines what the density is.

10 Q. So if we were to rezone the LC property,
11 what would the density in your mind be?

12 A. So I think probably a better question
13 might be what the current zoning is, and that's
14 S-1, which is zero residential.

15 Q. Okay. But with respect to the rezoning
16 of the LC property to a PUD, what level or
17 what's the density in the number of apartments
18 that would constitute high density apartments,
19 in your mind?

20 MR. SILK: Objection to form. That's
21 compound.

22 Go ahead.

23 A. There has been no rezoning to a PUD on
24 that parcel. So I refer back to my original

1 statement, you asked me what high density means
2 to me. High density apartments are any number
3 of apartment units more than what is allowed by
4 the zoning code presently.

5 Q. How many apartments are allowed by
6 Worthington's zoning code for planned unit
7 developments?

8 A. The PUD itself decided how many
9 apartment units are allowed to be built --

10 Q. Okay.

11 A. -- when proposed by the developer.

12 Q. All right. So with respect to
13 Lifestyle's application to rezone the property
14 to a PUD, what constituted high density
15 apartments, in your mind, under LC's
16 application?

17 A. The general concept of any property in
18 Worthington, again, is any number of apartment
19 units more than what is currently zoned. I
20 think what you're asking me, and probably
21 against my lawyer's advice, is -- and I'm going
22 to answer -- is I don't have a direct answer for
23 that. I don't have a specific number in mind,
24 which I think we covered that earlier.

1 Q. What constitutes a high density
2 development, as you've phrased it here in
3 Exhibit 49?

4 A. Which paragraph?

5 Q. Looking at Exhibit 49, under the bold
6 heading of UMCH property, in the second
7 paragraph you wrote, however, as the lawsuit
8 continues into 2024, electing council candidates
9 who support high density developments could
10 completely change the outcome through stand-down
11 settlements that allow the developer to build
12 high density apartments.

13 And my question to you is what are you
14 referring to as high density developments?

15 A. I have no specific number of units in
16 mind. I just know -- yeah, I'll leave it at
17 that. I have no specific number of units in
18 mind.

19 Q. High density developments is different
20 than high density apartments, so I'm trying to
21 understand what the distinction between your two
22 phrases are, as you've used it here?

23 A. You're right, they are different by
24 definition. I think generally a high density

1 development would include high density
2 apartments, in my mind personally.

3 Q. And would high density development
4 include anything other than a high density level
5 of apartments, as you put it?

6 A. It could.

7 Q. What would that be?

8 A. It could include mixed-use of commercial
9 and retail as well.

10 Q. Okay. So are you opposed to high
11 density developments?

12 A. I am not opposed to high density
13 developments. I've even voted for some.

14 Q. Which ones?

15 A. The Heights up here at the mall on West
16 Wilson Bridge Road, in whatever year that was.
17 I voted in favor of that.

18 Q. Is The Heights project that you voted in
19 favor of part of what the CIC is overseeing?

20 A. No, I don't think so. I'm not sure what
21 you're referring to.

22 Q. The East Wilson --

23 A. Oh, right. No. Two different -- yeah.

24 Q. You used the phrase stand-down

1 settlements here. What are you referring to
2 there?

3 A. I'm not really referring to anything
4 specific.

5 Q. What did you mean when you used that
6 phrase in this blog entry?

7 A. I think my mind-set at the time of
8 writing this was very much thinking about, you
9 know, this refers to a lawsuit, and having been
10 through prior lawsuits personally that I
11 mentioned earlier, it's a word that kind of
12 stuck with me through -- through that process.
13 So that's a word that I picked up from my past.
14 It doesn't mean anything specific.

15 --0--

16 (Deposition Exhibit 50 marked.)

17 --0--

18 BY MR. INGRAM:

19 Q. Councilman Smith, you've been handed
20 what's been marked Exhibit 50. And Exhibit 50
21 is a screenshot taken from the December 2021
22 City Council hearing and Mr. Brown's
23 presentation to City Council. You'll see from
24 the screenshot it was at the 31-minute,

1 21-second mark of the meeting, if I read that
2 correctly.

3 A. Yeah, sure, let's go with that.

4 Q. Or thereabouts. And do you recall
5 Mr. Brown providing this as part of his
6 presentation as depicted here in Exhibit 50?

7 A. Yeah, I do.

8 Q. And you can see, as far as the revised
9 concept that LC proposed, there were 420
10 apartments proposed?

11 A. Yeah, it says here. Uh-huh.

12 Q. So then when I look at Exhibit 49, what
13 is the basis for your representation that there
14 is a 700-unit apartment complex proposed in the
15 first paragraph there on Exhibit 49?

16 A. Yeah, 700-unit apartment complex refers
17 to the 700 units in total-ish. It's
18 approximate. We're not dealing with exact
19 numbers in my blogs, typically. And apartments
20 in this context is not owner-occupied units.

21 Q. All right. Where in Exhibit 50 do we
22 even come close to 700 -- a 700-unit apartment
23 complex?

24 A. 420 plus 86 plus 72 gets us to 600,

1 somewhere close to 700.

2 Q. Okay. But not all the townhomes or
3 townhome flats were going to be for rent, were
4 they? Do you recall that?

5 A. I don't recall exactly the number, no.

6 Q. But regardless, it doesn't add up to 700
7 apartment units, does it?

8 A. Well, that's correct.

9 Q. Councilman Smith, your attorneys have
10 indicated that there may be yet additional
11 documents to be produced in this case, and
12 subject to the production of those documents, I
13 don't have any further questions for you today,
14 but I am going to leave your deposition open.

15 A. Okay. Can I clarify that statement
16 based on the question you asked?

17 Q. Okay.

18 A. Sorry.

19 Q. Which statement -- you're pointing to
20 Exhibit 49.

21 A. Yeah. 49, the first paragraph where you
22 called into question my math on 700 units, which
23 in your questioning, yes, you're correct, the
24 math does not add up, but in this statement on

1 my blog on Exhibit 49, first paragraph, never
2 does it refer to that presentation. So I just
3 feel it was a little disingenuous to connect the
4 presentation to my blog, which I wasn't doing.
5 So let's just clear the record there.

6 Q. Okay. The presentation set forth in
7 Exhibit 50, however, reflects Lifestyle's
8 concept plan that was before council, correct?

9 A. That's true.

10 MR. INGRAM: Okay. And as I said, I'm
11 going to leave your deposition open.

12 THE WITNESS: That sounds good. I'm
13 available for whatever you need.

14 MR. SILK: Don't get carried away.

15 --O--

16 Thereupon, the testimony of October
17 10, 2023, was concluded at 5:13 p.m.

18 --O--

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CERTIFICATE

STATE OF OHIO :
SS:
COUNTY OF FRANKLIN :

I, Rhonda Lawrence, a stenographic court reporter and notary public in and for the State of Ohio, duly commissioned and qualified, do hereby certify that the within-named DOUG SMITH was first duly sworn to testify to the truth, the whole truth, and nothing but the truth in the cause aforesaid; that the testimony then given was taken down by me stenographically in the presence of said witness, afterwards transcribed; that the foregoing is a true and correct transcript of the testimony; that this deposition was taken at the time and place in the foregoing caption specified.

I certify that I am not a relative or employee of any attorney or counsel employed by the parties hereto and that I am not financially interested in the action. I further certify review of the transcript was requested.

In witness whereof, I have hereunto set my hand at Columbus, Ohio, on this 24th day of October, 2023.

Rhonda Lawrence
Rhonda Lawrence
Notary Public, State of Ohio

My commission expires: October 9, 2028

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RESOLUTION NO. 04-2022

Adopting an Amendment to the Comprehensive Plan Update and 2005 Strategic Plan, and the 2014 Amendment (Resolution No. 39-2014), for the United Methodist Children's Home Focus Area for the City of Worthington.

WHEREAS, City Council wishes to amend the Comprehensive Plan Update and 2005 Strategic Plan, including the 2014 Amendment (Resolution No. 39-2014), as it pertains to the United Methodist Children's Home Focus Area, in order to guide future use and development of the site and to encourage the social vibrancy and economic health of the City; and,

WHEREAS, City Council has, since the last Comprehensive Plan Update related to the United Methodist Children's Home Focus Area (Resolution No. 39-2014), received on multiple occasions and through many mediums communications from members of the public and public interest groups on the subject of UMCH development, which, in light of the City's prior planning, has provided the insights and understandings needed to produce a well-grounded and high quality revision to the Plan; and,

WHEREAS, City Council wishes to utilize the Comprehensive Plan as an important source for guiding the development, wise growth, and long-term investments in the community.

NOW, THEREFORE, BE IT RESOLVED by the Council of the Municipality of Worthington, County of Franklin, State of Ohio:

SECTION 1. That the attached amendment to the Comprehensive Plan Update and 2005 Strategic Plan, including the 2014 Amendment (Resolution No. 39-2014), as it pertains to the United Methodist Children's Home Focus Area, be adopted to serve as a guide for future use and development of the site.

SECTION 2. That the Clerk of Council be and hereby is instructed to record this Resolution in the appropriate record book.

Adopted January 18, 2022

/s/ David Robinson
President of Council

Attest

/s/ D. Kay Thress
Clerk of Council

United Methodist Children's Home Focus Area

This section of the Worthington Comprehensive Plan was updated in 2022 for the United Methodist Children's Home Focus Area. This section, following a short Background introduction, is stated in terms of guiding principles and general components for future development of the site. This text reflects, following the 2014 update, a current understanding of public opinion, market conditions, and evolving societal and environmental values.

Background

The United Methodist Children's Home Focus Area, given the size and location of this undeveloped land, represents a unique opportunity for the City and residents of Worthington to enhance social vibrancy and economic prosperity in a sustainable manner. The site is located north of Old Worthington, and south of the High North and Worthington Gateway projects, along the High Street Corridor. This land, located between these historic and economic focal points, and directly across the street from City Hall, may serve as a centerpoint for City planning.

The goal of this update, as with the other content of this Plan, is to provide guidance regarding the range of desired land uses and development options, respectful of property valuation within current zoning, and to assist the City with its review and evaluation of any proposal. This Plan will guide and facilitate any future development process for this site in a manner that conforms with the well-being of the general public as well as the rightful interests of the property owners.

Guiding Principles

- It is important that the development of the property be considered and executed holistically, as an integrated whole.
- Because of its size and central location, this undeveloped land represents a singular opportunity for the City of Worthington to develop the property in a manner that is extraordinary and that serves the long-term interests of the community. As an historic community, it is natural and appropriate for the City and its residents to think in this way.
- It is essential that any development of the site be harmonious and compatible with the fabric of surrounding neighborhoods and the natural environment. This pertains to traffic patterns, environmental impact, scale and density of any residential housing, impact on schools, and the architectural and aesthetic provisions inherent for any property, as are these parcels, located within the Architectural Review District. Stated positively, outcomes should increase community well-being and vibrancy, opportunities for social activities for persons of all ages, bicycle and pedestrian connectivity, commercial opportunities, and housing, appropriate in scale and type, that support these goals.
- We seek an outcome on this land that is distinctive, exceptional, and expressive of Worthington's own values and community ethos.

General Components

- Compatible with current S-1 zoning, a large contiguous greenspace, central to the property and inclusive of the Tucker Creek acreage, is a highly desirable component of any outcome.
- Commercial development, aimed at revenue generation for the City and select service-oriented retail that is compatible with the development, is highly desirable along High St., roughly in conformity with the existing C-2 and C-3 zoned areas.
- Residential housing, though requiring rezoning, is desirable, if:
 1. It is creatively executed, and,
 2. whether embedded within the commercial areas or free-standing, is harmonious in overall mass and scale, form, and impact upon surrounding neighborhoods.



City Council Agenda

Minutes

Monday, December 13, 2021 at 7:30 pm

6550 N. High Street, Worthington, Ohio 43085

Virtual Meeting Information

1. Call to Order

Minutes:

Worthington City Council met remotely in Regular Session on Monday, December 13, 2021, via Microsoft Teams videoconference. President Michael called the meeting to order at or about 7:30 p.m.

2. Roll Call

Minutes:

Members Present: Peter Bucher, Rachael Dorothy, Beth Kowalczyk, Scott Myers, David Robinson, Doug Smith and Bonnie Michael

Member(s) Absent: None

Also Present: City Manager Matt Greeson, Assistant City Manager Robyn Stewart, Assistant City Manager Economic Development Director David McCorkle, Law Director Tom Lindsey, Director of Finance Scott Bartter, Director of Service & Engineering Dan Whited, Director of Planning & Building Lee Brown, Director of Parks & Recreation Darren Hurley, Chief of Police Robert Ware, Chief of Fire & EMS Mark Zambito, Management Assistant Ethan Barnhardt, Clerk of Council D. Kay Thress

3. Pledge of Allegiance

Minutes:

President Michael invited all to stand and join in reciting the Pledge of Allegiance to the flag.

4. Visitor Comments

Minutes:

There were no visitor comments.

Approval of the Minutes

5. Approval of Minutes - November 8, 2021



Minutes:

MOTION: Mr. Bucher moved, Ms. Kowalczyk seconded a motion to approve the November 8, 2021 minutes as presented.

The motion carried unanimously by a voice vote

Public Hearings on Legislation

6. Ordinance No. 58-2021 Former United Methodist Children's Home Rezoning Application

To Amend the Official Zoning Map of the City of Worthington, Ohio, to Change Zoning of Certain Land from R-10 (Low Density Residential), S-1 (Special), C-2 (Community Shopping Center) and C-3 (Institutions & Office) to PUD, Planned Use District at 1033 N. High St., 47 Larrimer Ave. and 57 Larrimer Ave. (100-006774, 100-002427 & 100-002425).

Minutes:

Mr. Brown overviewed that the request here is to rezone approximately 37.8 acres at 1033 North High Street from our R-10 Low-Density Residential district, our S-1 Special District, our C-2 Community Shopping Center District, and our C-3 Institutions and Offices to a Planned Unit Development (PUD) for the United Methodist Children's Home Site (UMCH). As with any rezoning request, the steps include the application going before the Municipal Planning Commission (MPC) and then to the City Council. The MPC makes a recommendation to the City Council, but Council has the ability to approve, approve with modifications, or deny an application. This request is to rezone to allow for up to 600 residential units consisting of 22 single-family homes, 86 townhomes, 72 townhomes/flats, and 420 apartments along the High Street Frontage. It would also include a little over 24,000 square feet of commercial/retail, 96,000 square feet of medical office, and a 6.4-acre dedication along Tucker Creek along with the various open spaces on the lot. As a background, the application was made in October 2021 and went before the MPC/ARB in January 2021 where it was tabled. It came back with revised materials in September 2021 and went before the MPC in October. The MPC did unanimously deny the application due to the overall density of the site, the housing types provided, contiguous open space, heights of buildings, and connection points. Staff also recommended denial for similar reasons in addition to not meeting the recommendations of the Comprehensive Plan Strategic Update, the Bicycle and Pedestrian Plan, and the Parks Master Plan.

Mr. Bo Brownless on behalf of the applicant discussed the background of the application and how Lifestyle Communities now owns the property. They intend to develop the site in a way that is consistent with the City's Comprehensive Plan and that can be viable under evolving market conditions. The mutual goals with the City should be to create a vibrant, live, work, entertainment, mixed-use development, offering housing diversity, as well as updated commercial, restaurant, and service use at the City, moving the City forward economically with a viable development that will stand the test of time. The rezoning here was specifically designed to be consistent with the Comprehensive Plan, with an emphasis on density in the High Street mixed-use zone. The Comprehensive Plan states that the objective of this zone is to create a

high-quality, dense, walkable, connected, mixed-use development that creates a dynamic space and signature address to attract Class-A offices along High Street. Buildings in this zone should be a minimum of two stories and a maximum of five stories. To achieve the desired densities, parking decks are encouraged to be integrated in the site. It is clear that the Comprehensive Plan is calling for density and height, and density is a key driver of a vibrant and successful mixed-use development.

The level of density LC is proposing here is not unusual and comparable to other successful infills, redevelopment, and mixed-use projects that are also led by residential components. The revised development plan introduced made many improvements and noted that the applicants listened to comments made during community outreach and from City Staff. This revised plan is less dense overall, reducing apartments by 19%, adding more office and commercial space, approving open space and path connections, improving access to existing neighborhoods, and activating the Tucker Creek Preserve for public use. They moved the height from Longfellow and Larrimer and towards High Street and the revised plan has nearly 25% open space, opening the site to be integrated with existing neighborhoods. As for the process, they filed a complete rezoning application consistent with the Comp Plan and had limited access or input from the City outside from their staff reports. The City leaders told them that they were unable or unwilling to meet the applicant outside the context of public MPC hearings in order to work through the development and site plan issues. Subsequently, the applicant has been left guessing about what type of plan would get MPC and Council support. The City agreed in order to move forward, the applicant could submit a revised site plan without fully amending the rezoning application in order to determine if the applicant was on the right path. The applicant then voluntarily made changes to reduce residential density and increase office space. When the applicant presented this new plan to the MPC to gather constructive feedback, the MPC refused to table the applicant and simply rejected the original applicant and moved it to City Council for approval or rejection. In their experience, it is unprecedented for any jurisdiction to refuse to work with an applicant on rezoning involving a PUD. The applicant wants the City and residents to know that LC remains committed to a path forward that satisfies mutual goals. In conclusion, three requests are being made to City Council this evening: 1) Refer the application back to the MPC with instructions they should provide a genuine and collaborative effort with respect to the development proposal 2) Empower the City staff to communicate and work directly on the development plan and serve as a liaison to the MPC and Council 3) They be afforded the opportunity to amend their initial rezoning application with a revised site plan as was initially discussed with staff, and be afforded a full hearing at the MPC to work through that revised application.

Mr. Tom Hart explained how we got here and how a greater detailed discussion with City Staff and leadership is required. Through this process, they were told that MPC is the only option to move forward. They had no other entry point for a key discussion on this proposal, but they did expect full and fair deliberations with multiple hearings.

Instead of those full hearings, after one hearing the MPC made their negative recommendation and they did not amend the application to include the updated plan. MPC's actions do not meet the standards for full, fair, and meaningful hearings on this application. What has occurred to date falls short of any applicant's right to full, fair, and meaningful public hearings on the record and in the context of a PUD request with all issues on the table and fully deliberated. It serves no clear purpose to recommend a negative vote when LC was actively attempting and is still willing to work towards a positive outcome. Over the course of his career, he has not seen any other significant redevelopment site in Central Ohio be handled this way. The MPC did not provide the opportunity for the give and take that would be necessary to refine the proposal and take into account all the input from residents and City leaders. The staff report identifies remaining issues and also identifies several improvements from the revised plan that was submitted. The handling and outcome of this application seem predetermined and the City appears to have treated this proposal differently than other similarly situated applicants. In terms of the next steps, this applicant has presented a complete application that meets the Comprehensive Plan and has reasonably requested to amend their site plan. They are asking for greater deliberation and negotiation, along with the opportunity to reach compromises. They would also like to have meaningful and detailed meetings with the professional City Staff on a variety of issues such as economic development, traffic, and incentives for public improvements. This applicant wants to work with the City and its professional staff to move this site forward and make it work in the real world.

Mr. Chet Ridenour expressed that the current LC proposal for the UMCH site is a bad proposal in many ways and bad for the City of Worthington and should be rejected. The housing density is too high for that site and the building heights are too tall. This proposal is not consistent with the center of Worthington. Our City is supposedly modeled after a small New England town, and he asked how many New England towns have multi-story high-rise apartment buildings in the center of town. We do not need it here. The current plan is very similar to all of the past iterations, with only small tweaks along the way, and LC just does not get it. How many times do people have to say to LC to decrease the density and amount of apartments. At the last MPC meeting, Mr. Hart stated that LC decreased the amount of aggregate green space when residents have been saying it should be increased. He reminded Council that in the last election, four of the candidates were supported by the WARD group and supported the WARD position for development on the UMCH property. Of the four candidates, they received 68% of the votes cast for City Council with Mr. Robinson and Ms. Brewer being the top two vote-getters. That should tell you something about what the people of Worthington want. Lastly, he would like to remind Council that they are here to represent the people of Worthington, not LC, and he asked that Council reject this plan for the UMCH site.

Mr. John Byrnes of 161 Tucker Drive commented how he agrees with the MPC's unanimous decision to deny the LC proposal and he urges Council to listen to staff's reasons for denial as well. These were all well-considered decisions over a significant

amount of time with resident input, as well as plenty of input from LC. There have been plenty of opportunities for LC to listen to the residents to create a new plan. He underscored how there is no need to change the current zoning plan for the property to achieve the City's goal of increased tax revenues. The current zoning would permit commercial development along High Street with public green space, or less dense residential development. The commercial development to generate tax revenues could be obtained without any change in the current zoning. The problem is that LC is an apartment developer and they want to put in their apartments first. In one of the focus groups he attended with LC's Tom Hart, he expressed doubts that there was actually sufficient market demand in Worthington for the amount of Class-A office space the City wants to have. He thinks that once LC builds their apartment complex, they will sell the property along High Street and some other company will have to take the risk to see if there is commercial demand there. In terms of the balance of the property, the best outcome would keep with the quiet residential neighborhoods that have been nearby for over 60-years. You go into the neighborhoods, not to destroy what property owners bought into when they entered into these neighborhoods, that is normal residential streets without being converted into thoroughfares for cars that come from the 600 new residents with a density of 49 units per acre. All streets in Worthington Estates and Worthington would be choked off and routed north to Wilson Bridge Road. This will have a huge impact on the current residents and their property values. It is telling that in the many years LC has been developing this plan, they have not conducted a legitimate, up-to-date traffic impact study. They are not being sincere when they have sought out community input. There are questions about whether or not the City's current master plan needs to be updated to reflect current realities. The illustrations put forth by LC with al-fresco dining and wine shops, do not take into consideration that the Worthington Inn has been vacant for almost two years. La Chatelaine does not open for dinner. There are already destination restaurants on High Street. He asked where the entrepreneurs are going to come from for these new restaurants and businesses. Our Economic Development team should work to fill in the holes we have already before paving over this gem of greenspace and leaving us with more vacancies. He remembers The Continent when it was new and gleaming, with all the premium amenities. Maybe LC should look to redevelop the Continent, rather than in downtown Worthington. We only have five square miles here, and this is a significant piece of downtown Worthington.

Ms. Beth Mitchell of 58 Larrimer Avenue shared how she is speaking tonight on behalf of WARD, the Worthington Alliance for Responsible Development. They want to go on record with the document they submitted and she will read it into the record tonight,
To City Council Members:

At the Council Meeting, Monday, December 13, 2021, Lifestyle Communities (LC) will be asking Council for a rezoning of much of the UMCH property so they can proceed with their latest development proposal.

MPC and ARB Board members unanimously denied the LC proposal at their meeting

October 14, 2021. The MPC members stated:

• LC has not been listening to the city or residents. Over 450 emails were received- most not supporting the LC proposal. In addition, many residents spoke against the proposal. • Proposed development is too dense for this location in the Architectural Review District. • Does not have the look and feel of a New England village as called for in architectural review guidelines. • Proposed buildings are too tall for this location. • Does not provide significant contiguous greenspace. • Does not provide acceptable connectivity to neighborhoods with responsible traffic flow. WARD also notes: • Residents have stated multiple times the need for affordable housing and empty nester residences, neither of which are provided in this proposal. • Why would Council set aside the unanimous MPC and staff recommendations to reject the LC proposal, particularly considering the telling feedback received from residents? • Some who spoke in favor of the LC proposal at the MPC meeting, do not live within the City district (43085). Is it appropriate for non-residents to speak at our Worthington meetings? WARD supports the denial by MPC/ARB and requests that Council also deny rezoning of the Lifestyle Communities proposal. WARD continues to recognize the UMCH property as centrally located and a legacy space with the potential to become a prime community asset."

Respectfully submitted by the WARD Planning Group

Mr. Blair Davis commented that the argument commented by LC tonight is that the City has not treated them fairly. The reality, the MPC told them what we wanted in very specific terms, and three times they came back and ignored it. The people who are being unfair are LC towards the City.

Mr. Michael Sharvin and Ms. Amber Evans of 360 Tucker Drive expressed how they appreciate the comments from the residents and as a community we have come together in opposition to this project. Mr. Sharvin said that he has seen little to no reason to rezone any hardship that LC has brought or is asking for community input or work with the MPC. As Mr. Davis said, it seems like they are complaining they have not had enough communication, but he still sees zero reasons to rezone to allow the type of use being proposed. If they would like to use this property the way it is currently zoned, maybe he would be upset about that but would be in their power to do. LC is looking to rezone for its own economic purposes and they have always known what they are getting into with this property. They agree with the unanimous MPC decision to recommend denial of this rezoning.

Ms. Eleana Drakatos of 305 Bryant Avenue explained how she and her family are recent new residents of Worthington, moving in about three months ago. They moved here because of the uniqueness of the neighborhood. She offered that Council stated that Worthington is similarly situated with other communities where Worthington has had other developments, however, she would pose that it is not. The square mileage of Worthington itself is much smaller than somewhere like Upper Arlington. There would also be congestion and pollution generated with such a densely populated area and there is the potential for accidents and there would be difficulty in enforcing the speed limits near Evening Street.

Ms. Susie Kneedler stated that this plan would take away our location, changing life forever. We would never be able to have the Gary Smith Run. Worthington really needs a central park and we are park starved according to data that was put together comparing us to other communities. She added that with the Comprehensive Plan, everyone she met said that they were upset with the outcome by Chris Hermann and MKSK, and it did not represent what was asked for. Everyone really wanted to keep that beautiful land for some sort of park.

Mr. Joe Sherman conveyed how LC detailed how they own this property and plan to develop it, to satisfy a mutual need and would make it work in the real world. If we are going to make this happen, LC should respond and respect our needs as a City and not propose another self-serving development with so many residences and height of buildings. The long-term financial consequences of a high-density residential development will not be an economic boon to our City. LC has largely ignored that our City needs to generate income tax revenue from a multi-use development on the UMCH property. The UMCH site should serve the long-term interests of the residents, not the short-term interests of a developer. LC's business model is inflexible and incompatible with Worthington's needs and values, ignoring what the residents want and expect. LC only sees Worthington as a place to bulldoze both literally and figuratively your development into place. He joins those raising their voices in opposition, not out of fear of change, but out of simple common sense. He urges the Council to vote no.

Ms. Thress noted that all emails that came in before 4:20 pm today have been posted on the City's website. There have been about 12 emails since that time.

Mr. Smith asked the applicant for a better understanding of the comment of how the staff has not been communicating with them. He wondered if the staff has not been cooperating since 2011. Mr. Hart responded that after their initial presentation in January of this year, they asked for more detailed discussions with the professional folks in the City to go over things such as traffic, stormwater, how to program open space, connectivity, and architecture. These are things that you have to get to in order to reach a successful land-use plan and need some internal dialogue before going to the MPC. All these processes are open in the light of day because that is how zoning occurs. There is no infill site in any other community in Central Ohio that is not afforded that detailed discussion with the professional staff and City leadership. Mr. Smith clarified to be clear that prior to 2021, LC did not communicate or coordinate with City staff. Mr. Hart said that it is inaccurate to say that in total, Mr. Brown and the planning staff are always available to clarify code and procedure, but the difficult decision making is a collection of leadership and staff at all levels. Mr. Brown does a very good job representing the City as a professional. Mr. Smith asked about the relationship between LC and the City beginning in 2021. Mr. Hart said they filed their initial application in October of 2020. If you want to talk about 2015, he is ready to talk about that but is not relevant to today's climate. Mr. Brown helped in the months leading up to that application, but previously there was no formal application adjudicated or heard in the public hearing process in 2015, that was just an informal

public meeting.

President Michael explained how she remembers meeting with LC over ten years ago and they were talking about their plans, and she took out a City map and highlighter, stating what neighborhoods and people they needed to talk to get input. To this date, nobody has used that map or suggestion. LC has not really reached out to the community about what they feel. She wrote a letter to the editor six years ago about this property and has had several meetings with LC, to bring LC and the community closer together, but she feels like LC has not listened. Mr. Hart responded that they have conducted significant outreach, and what is being cited are examples before they submitted an application. When the application is actually filed, that is when there is greater detail on things like traffic and stormwater are done. He said that they are good listeners and there were about 100 people who commented on the application through virtual meetings and outreach, meeting with WARD, school district leaders, and business leaders. He does a lot of meetings, but there is a point where you getting yelled at and are just a venue for someone to vent their anger on you, and telling you a client should just socialize their site and turn it into a public space, there is a point where that is not productive anymore. There is a time when they want the process that can only come with MPC and Council consideration.

Mr. Robinson asked if Mr. Hart was at the 2015 public meeting. Mr. Hart said he was not, however, he does not believe it is relevant to today. Mr. Robinson asked what was heard from the community at that time and how was that expressed if at all in the October 2020 proposal. Mr. Hart explained that in 2015 they had a different amount of land under contract at that time with more acreage and High Street frontage, so the flexibility then compared to now is different, and more limited. We have been through an incredible change in office and medical uses, which are key things that the City has emphasized and they are trying to get there. The applicant wants to deliver on the tax base uses of office, commercial, and medical that are in the City comprehensive plan, but they think there is a different way to get there.

Many people expect to work from home or close to home, which is part of their strategy. Mr. Robinson clarified that his question was focused on how you understand what the message was from the community in 2015 and how that translated, if at all, to the 2020 proposal. Mr. Hart explained that it is not an easy answer and relates to how things have changed since 2015. The housing market is what is dominant today and monetize this site to make the office and commercial be supported economically. That is the emphasis that is showing up all over Central Ohio in these mixed-use, infill sites that create work, live, play, entertainment vibrancy. You need the housing component because it will fund it. The comments LC is hearing from the residents about the plans are almost the same and almost breaks down into that a lot of people think they can control other people's property and want a public space there. A public park is not what is in the City's comprehensive plan and they would not be meeting the comprehensive plan. In the new plan, they have opened up the site to and from High Street, and in the north with a gateway green and a bumper space to the northern neighborhood, and to the south with two entries, one at Wesley and another

through Tucker. He cited that as a way they have listened, but it cannot be a public park and that is contrary to the comprehensive plan. Trying to socialize the site like this and making it into a public park that somebody else owns and has property rights and developer rights with, is also contrary to law. He is struggling with the harkening back to 2015 because it's not like there was a lot of support for any development on this site, and they are trying to move past 2015, and the City needs to do that as well.

Mr. Myers expressed his disappointment, he thought that he had explained where he was coming from, and he thought there was progress being made. When it is said that the 2015 situation is not relevant, he explained the relevance of 2015 and how it directly ties to the decision he made in March of 2021. He first met with LC in the spring of 2015 and was presented with a plan that he said he could support because he is committed to new urbanism and mixed-use, and this is the right property for the right mixed-use development. Then July of 2015 hits and the rug was pulled out from under him because there was a completely different plan presented then than was earlier that year and he felt like he had been taken. It wasn't about the development, the issue was trust and regaining that trust. 2015 is highly relevant to this community and him personally. Then we got a plan that is even denser. In March of 2021, he totally lost faith though he has tried so many times personally, and he went to staff and said that this is going to need to be done in the open. It is interesting how it is brought up how LC has heard meetings where citizens vent their anger, but that does not compare to what he has heard over the past seven years on this issue and in two campaigns he went through. That is why this had to be done in the public. He got the impression at the end of the MPC meeting, the majority of the MPC members thought that LC would withdraw the application and start from ground zero to restart the process. Tonight he has not heard a lot about the plan, but rather how LC is being unfairly treated.

Mr. Smith asked what is the current rental rate per month for a two-bedroom unit in a property similar to a demographic like Worthington. Mr. Hart replied that it is about \$1700.

Ms. Dorothy emphasized that she still believes in the comprehensive plan and that Worthington is part of the Central Ohio area that is growing and it is a good problem to have. We have a little over 14,800 people here and we had our peak in 1970 with around 15,300 people. We have added more housing units but the family size for each of these units has decreased and we need more units. We have about the same amount of people in our 5.5 square miles as the City of Bexley which is 2.5 square miles, they have double the density but it is a very walkable community. Worthington was founded on a mixed-use development at the human scale and anything more than 4-5 stories become more than the human scale. We were founded as a New England town, but James Kilbourne also wanted Worthington to be the capital of Ohio and to grow with more opportunities for more people. The space at UMCH has been developed, it was forest space and there have been buildings on the site. There are sewer and water lines underneath the site, but it is not a pristine site and a perfect

green space. It is a space that should be mixed-use with opportunities for people in Worthington, including people who want to move here. Property values have been increasing and it is a very desirable place to be. People need a place to live, and they will tear down green space outside of Worthington to build. We need to provide some new spaces for people in live in Worthington and let them be a part of this vibrant community. There have been many twists and turns in this development saga for UMCH, and she would like the MPC to go back and work with LC, but there are a lot of things we need to think of other than just keeping things the way that they are. The question is if we are afraid of people or cars if we have mixed-use spaces that are walkable, we should not be nearly as afraid of cars as people seem to be. Every time we talk about more people, we talk about being afraid of cars. What if we created opportunities where we did not have to get in a car to get somewhere.

Mr. Smith explained how Council has heard a lot of feedback from residents and received close to 100 or more individual comments not supporting this proposal. LC has done a lot of outreach and he wondered if there are 100 or more resident comments supporting their proposal. Mr. Hart replied that they do not, but the City has nearly 15,000 residents. They are aware of the email campaign and input, but also know there are people who also want a more vibrant future for the community with diverse housing options, entertainment, retail, and employment opportunities. To let this site remain as is, they know there are many people who do not support that. Mr. Smith asked out of the City's residents if LC has ten letters of support. Mr. Hart replied that they do. Mr. Smith asked if those could be produced. Mr. Hart replied that he could do so.

President Michael brought up the importance of economic development and the potential for medical. She is concerned about the Ohio Health project, which was ready to be the economic cornerstone for this property, and then all of a sudden it disappeared. There were many supportive people of them being on that corner. She wondered what happened. Mr. Hart said he does not know the exact workings of their decision-making at that time, but since then, investment by healthcare organizations has been very difficult. However, residential is in demand and will drive this site.

President Michael asked what was being offered that is not an apartment, for people who want to downsize and stay in the community. She has heard how people want to be able to downsize to age-friendly housing and have it not be an apartment. Mr. Hart explained how they are offering two townhome products in the middle of the site, away from High Street, some of those would be flats with first-floor living. Some of the homes would also be empty-nester housing. President Michael asked how many owner-occupied townhouse units are included in this plan. Mr. Hart responded that there are 86 owner-occupied and there are 72 townhomes with walk-ups and flats. The townhomes that are for sale, are not single-story and are walk-ups. President Michael explained how people want single-floor living space and she wrote that six years ago in a letter to the editor. That is where she feels flustered because it does not seem like it has made it into the plan. Mr. Hart explained how with ranch housing in a single-story, they take up a large footprint on the earth. The balance on this plan

is about having more open space and there is 25% open space on the plan amended to MPC. The more single-floor ranches take up more space.

Mr. Bucher explained how some of the community engagement has been outlined and he asked about the process from LC on how community input has been considered and deliberate. We are clearly not seeing some of the things that are being raised.

What is stopping LC from putting forward something less dense and accomplishing other goals. Mr. Hart replied that the portions of the staff report document the positive changes that have been made. That report when it gets into the analysis of the different subareas and changes made cites multiple improvements from the site plan between 2020 and 2021. There is good documentation in the staff report about the improvement, relating to more office square footage, a decrease of apartments, opening up the site with connection paths, and greenspace treatment. Zoning works by trying to balance property owner rights with community needs, there is no shot clock or sudden death, and requires a lot of work and give and take. While they are ready to make more improvements, to say they have not moved is not accurate.

Ms. Kowalczyk asked Council, respecting everything that has been said and understanding the history, what we are considering in terms of process. The applicant has asked for a particular outcome tonight about referring back to the MPC. She wondered what is the impact of that versus a denial and what should be the appropriate consideration regarding that process. President Michael replied that there are three options, we can approve, deny, or refer back to the MPC. If there is a referral back, there needs to be input to the MPC on why it was referred back and what Council is expecting them to be looking at. If there is a denial, there is a period of time that must pass before LC can submit a new plan. Mr. Smith asked of those three options that it is each member's prerogative to vote as they see necessary. Mr. Lindsey replied that like any legislative matter, Council as individuals vote on the matter before them. In this instance, the question of which of those three options to approve, deny or refer, those would require some discussion amongst Council leading to a motion to refer back, or to an up or down vote on what has been presented. Due to LC's desire to submit it as a conceptual plan, the staff report calls out the density and height and other considerations that do exist in the plan as submitted. If you were to approve it, it would be based upon those factors. When it goes to a final plan, that is when you would need significant additional information provided by the applicant including the PUD text, with more specific standards. Mr. Robinson asked for clarification that if the proposal is denied tonight, LC would be free to resubmit a proposal at the six-month mark from the MPC, in mid-April. Mr. Lindsey replied that is correct. Mr. Robinson brought up how each Councilmember would be free to vote yea or nay, and asked if a motion is made, would that be for approval or denial, or as opposed to yes or not on the proposal in general. Mr. Lindsey explained that if Councilmembers in discussion prior to voting were to be interested in the referring back, that is where it would be a motion because you would not be voting on the specific ordinance before you. President Michael explained how we have an ordinance in place and Council always votes in a positive mode, so the vote would be for

approval for the ordinance as submitted, yes or no, or someone could file a motion to amend the ordinance to do something other than vote yes or no.

Mr. Myers shared he is of the opinion that the best course of action is to affirm the denial so we can have a clean start. The parties can either walk away and explore other options, or LC can come back and resubmit their application in April starting the process over again. It would be easier to start fresh rather than trying to put a round peg in a square hole.

MOTION: Ms. Dorothy moved to send Ordinance No. 58-2021 back to the MPC. There was no second.

The motion failed

There being no additional comments, the clerk called the roll on Ordinance No. 58-2021. Passage of the Ordinance failed by the following vote:

Vote Results: Ayes: 0 / Nays: 7

7. Ordinance No. 60-2021 Appropriation for New and Replacement Equipment and Various Projects

Amending Ordinance No. 53-2021 (As Amended) to Adjust the Annual Budget by Providing for Appropriations from the Capital Improvements Fund Unappropriated Balance to Pay the Cost of the 2022 New and Replacement Equipment Items and for Certain Projects as Identified in the 2022 Five-Year Capital Improvements Program and all Related Expenses and Determining to Proceed with said Projects.

Minutes:

Mr. Greeson explained how last week, Council approved the five-year CIP. In the first year of that plan, there were equipment and amounts listed here in this ordinance. It is customary for Council to appropriate funds to implement the new and replacement equipment in the plan. Staff recommends approval.

There being no additional comments, the clerk called the roll of Ordinance No. 60-2021. The motion carried by the following vote:

Vote Results: Ayes: 7 / Nays: 0

8. Ordinance No. 61-2021 Community Reinvestment Area Amendment

An Ordinance Authorizing the City Manager to Enter into an Amended Community Reinvestment Area Agreement with Worthington 17, LLC, an Ohio Limited Liability Company, to Change the Starting Year of the Existing Abatement Period from Tax Year 2021 to Tax Year 2024.

Minutes:

Mr. McCorkle described how this ordinance is to amend the CRA exemption for 6700 North High Street which is the former Anthem Blue Cross/Blue Shield building. This was approved in 2019 with Ordinance 21-2019 and is a 75% ten-year tax abatement. When it was originally approved, it was anticipated renovations would occur in the building by 2020, however, that did not occur. In an effort to keep the full ten-year abatement in place as originally planned to attract prospective tenants, the staff is recommending that the exemption be amended. If approved, this would amend the start year of the CRA exemption for that property to the tax year 2024, and all other terms of the agreement will remain the same.

There being no additional comments, the clerk called the roll of Ordinance No. 61-2021. The motion carried by the following vote:

Vote Results: Ayes: 7 / Nays: 0

New Legislation to Be Introduced

9. Resolution No. 67-2021 Premium Pay for Lifeguards

Authorizing a Temporary Premium Pay Rate for Part-Time Lifeguards (Class Specification Number 209)

Minutes:

Introduced by Mr. Smith

MOTION: Mr. Myers moved, seconded by Ms. Dorothy to adopt Resolution 67-2021. Mr. Hurley overviewed how we are experiencing an extreme shortage of lifeguard staff, which is impacting our service levels and ability to provide our swim facilities to our residents. We have had to scale hours back significantly and defer providing services such as swim lessons, water aerobics, and birthday party rentals. This is not just a Worthington issue, it is a widescale issue in both the public and private sector. There are many things that could help other than just pay, and we are examining other incentives. In the short term, we believe the best thing is to offer up to \$2 per hour increase in pay to help recruit new lifeguards.

Mr. Myers clarified that this is a temporary premium on the rate and does not change the actual payscale. His understanding was confirmed.

The motion carried unanimously by a voice vote

10. Resolution No. 68-2021 Expense Reimbursement for Future Debt Issuance

Authorizing the Use of a Portion of the Proceeds of Bonds or Bond Anticipation Notes of the City of Worthington, in the Estimated Principal Amount of Not to Exceed \$2,550,000, to be Issued for the Purpose of (I) Designing, Replacing, and Constructing Waterline Improvements on Colonial and Foster Avenues; and (II) Designing, Repairing, Rehabilitating, and Replacing Sanitary Sewer System Infrastructure, to Reimburse the City's General, Permanent Improvement, or Bond Construction Fund for Moneys Previously Advanced for such Purpose.

Minutes:

Introduced by Mr. Robinson

MOTION: Mr. Bucher moved, seconded by Ms. Kowalczyk to adopt Resolution No. 68-2021

Mr. Greeson explained how this is a reimbursement resolution that authorizes us to spend capital improvement funds to accomplish a couple of projects and then, later on, reimburse the CIP with bond proceeds once bonds are issued.

The motion carried unanimously by a voice vote

11. Resolution No. 69-2021 Transfer of Funds

Adjusting the Annual Budget by Providing for a Transfer of Previously Appropriated Funds.

Minutes:

Introduced by Mr. Robinson

MOTION: Mr. Bucher moved, seconded by Ms. Kowalczyk to adopt Resolution No. 69-2021

Mr. Greeson stated that this is a standard transfer resolution for a transfer of about \$6500.

The motion carried unanimously by a voice vote

12. Ordinance No. 62-2021 Amend Code Chapters 1151 (Nonconforming Uses) and 1181 (Wilson Bridge Corridor)

Minutes:

Introduced by Mr. Smith

Mr. Robinson asked for more information on what we are referring the MPC to do and the breadth of their considerations. Mr. Greeson replied that last week when we were discussing the zoning cases, specifically the two that created nonconforming uses, Council expressed a desire to send to MPC a couple of general issues. The first is to consider amending Chapter 1151 that deals with nonconforming uses to make it more flexible for some of the homeowners that may have been affected by our rezoning decision. An example of that would be increasing the percentage of annual maintenance that can be done. The second is to refer Chapter 1181 which is the actual creation of the actual Wilson Bridge Road zoning districts and whether there can be any flexibility granted in amending that section of the code. Mr. Brown explained how what was heard from Council was to look at the maintenance and repair section of the nonconforming use section and ways to lessen the impact of the single-family uses. Hopefully, over the next month, we can start working on language for the MPC to consider to get a recommendation back to Council to change the planning and zoning code.

MOTION: Mr. Smith moved, seconded by Mr. Myers to refer this to the Municipal Planning Commission for review and send the recommendations back to Council.

The motion carried unanimously by a voice vote

13. Ordinance No. 63-2021 Approving Revised Final Plat (6700 N High St)

Approving a Final Plat for the Subdivision, Platting of an Access Easement, and Dedication of Land Currently Used for Public Right-of-Way on a Property at 6700 N. High St. (Advanced Civil Design/Worthington 17 LLC)

Minutes:

Introduced by Mr. Smith

Set for public hearing on December 20, 2021

Reports of City Officials

14. Policy Item(s)

a. Motion to Withdraw - Ordinance No. 09-2020 (Rezone 47 and 57 Larrimer Ave, and a small portion of 1033 N. High St.)

Minutes:

Mr. Lindsey explained how it was discovered in a review of past actions of Council that has not passed final conclusion, these two ordinances had been introduced but no action was taken on them. From Robert's Rules, tabling something to a date uncertain is a means of killing things, but generally, Councils vote up or down or withdraw to truly end a piece of legislation that was introduced. The first one involved the ordinance that would have dealt with Ohio Health's proposed development. Since Ohio Health requested it be withdrawn, we are now taking the action based on their request last March. On the next ordinance, in the efforts to get the pool refinished, we went out a couple of

different times to get bids and we had an ordinance introduced where we did not get bids and that ordinance was tabled. We then after further work, went back out to move forward with bids and a new ordinance was introduced. We were able to negotiate the work and came back to Council and went with the original ordinance introduce and still had this open ordinance on the same subject matter. It does not seem appropriate to vote down the respective ordinances, and staff is asking Council to withdraw the ordinanes.

MOTION: Mr. Myers moved, seconded by Ms. Dorothy to withdraw Ordinance No. 09-2020

The motion carried unanimously by a voice vote

b. Motion to Withdraw - Ordinance No. 06-2021 (Community Center Pool Resurfacing)

Minutes:

MOTION: Mr. Robinson moved, seconded by Mr. Bucher to withdraw Ordinance No. 06-2021

The motion carried unanimously by a voice vote

c. Financial Report - November 2021

Minutes:

Mr. Bartter explained that there is nothing particularly new with this report and income tax collections remain robust.

MOTION: Mr. Myers moved, seconded by Ms. Kowalczyk to accept the November 2021 financial report.

The motion carried unanimously by a voice vote

Reports of Council Members

15. Reports of Council Members

Minutes:

Mr. Robinson thanked his colleagues for the discussion tonight and that he took personal satisfaction by voting with Mr. Myers. It is meaningful to find himself thinking accord with him.

Other

Executive Session

Adjournment

16. Motion to Adjourn

Minutes:

MOTION: Mr. Myers moved, Ms. Dorothy seconded a motion to adjourn. The motion

carried unanimously by a voice vote.

President Michael declared the meeting adjourned at 9:40 p.m.

Contact: D. Kay Thress, Clerk of Council (Kay.Thress@worthington.org (614) 436-3100) | Minutes
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/s/ Ethan C. Barnhardt

Management Assistant

Attest

/s/ David Robinson

President of Council